

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
vs.) Criminal Action
)
HERZZON SANDOVAL,) No. 15-10338-FDS
EDWIN GUZMAN,)
CESAR MARTINEZ,)
ERICK ARGUETA LARIOS,)
Defendants)

BEFORE: THE HONORABLE F. DENNIS SAYLOR, IV

JURY TRIAL DAY 3

John Joseph Moakley United States Courthouse
Courtroom No. 2
1 Courthouse Way
Boston, MA 02210

February 1, 2018
8:35 a.m.

Valerie A. O'Hara
Official Court Reporter
John Joseph Moakley United States Courthouse
1 Courthouse Way, Room 3204
Boston, MA 02210
E-mail: vaohara@gmail.com

1 APPEARANCES:

2 For The United States:

3 United States Attorney's Office, by CHRISTOPHER J. POHL,
4 ASSISTANT UNITED STATES ATTORNEY, and KELLY BEGG LAWRENCE,
5 ASSISTANT UNITED STATES ATTORNEY, 1 Courthouse Way, Suite 9200,
6 Boston, Massachusetts 02110;

7 For the Defendant Herzzon Sandoval:

8 Foley Hoag LLP, by MARTIN F. MURPHY, ESQ. and
9 MADELEINE K. RODRIGUEZ, ATTORNEY,
10 155 Seaport Boulevard, Boston, Massachusetts 02210;

11 For the Defendant Edwin Guzman:

12 Lawson & Weitzen, by SCOTT P. LOPEZ, ESQ.,
13 88 Black Falcon Avenue, Suite 345, Boston, Massachusetts 02210

14 For the Defendant Erick Argueta Larios:

15 THOMAS J. IOVIENO, ESQ., 345 Neponset Street
16 Canton, MA 02021;

17 For the Defendant Cesar Martinez:

18 STANLEY W. NORKUNAS, ESQ., 11 Kearney Square,
19 Howe Building, Suite 202, Lowell, Massachusetts 01852.

20 ROBERT M. SALTZMAN, ESQ., 1 Central Street, Suite 5,
21 Stoneham, Massachusetts 02180.

22 ALSO PRESENT: Gabriel Haddad, Spanish Interpreter
23 Carrie Lilley, Spanish Interpreter
24
25

I N D E XOPENING STATEMENT

By Ms. Lawrence	35
By Mr. Iovieno	50
By Mr. Murphy	57
By Mr. Lopez	65
By Mr. Norkunas	75

WITNESSDIRECTCROSSREDIRECTRECROSS

RICHARD DALEY

By Mr. Pohl

82

116

By Mr. Murphy

110

JEFFREY ELLIOTT WOOD, JR.

By Mr. Pohl

117

EXHIBITSFOR I.D.IN EVIDENCE

1.1, 1.2 and 1.3

143

91

82

93.1 through 93.4

87

94

90

95

89

96

94

96.2

96

97

98

98

99

99

99

101.2 through 101.5

101

102

103

1 PROCEEDINGS

2 THE CLERK: All rise. Thank you. You may be seated.
3 Court is now back in session.

4 THE COURT: Good morning, everyone. I have a motion
5 filed by Mr. Barron on behalf of Jose' Fernandez Miguel, which
6 I want to take up. I guess I'll take it up first. I've read
7 the papers quickly. Who wants to be heard in opposition to the
8 motion?

9 MR. LOPEZ: That would be me, your Honor, I'm the one
08:36AM 10 that served the subpoena.

11 THE COURT: So, your Honor, last Friday, we received
12 an e-mail from the government telling us that in preparation
13 for trial, Mr. Jose' Hernandez-Miguel changed some of his
14 proposed testimony or what he had said previously, specifically
15 in a prior proffer, there was a report, and I forget the date
16 because I didn't bring it with me, that Pelon, CW-1,
17 participated in an attempted murder on May 12th, 2015, and in
18 the earlier proffer, Mr. Hernandez-Miguel related, according to
19 this report, that Pelon knocked down the alleged victim and
08:37AM 20 held him down while Jose' Hernandez-Miguel stabbed him.

21 Subsequently, Mr. Pelon kind of tried to minimize his
22 behavior when he spoke to the agent about it, and that's kind
23 of besides the point. In this latest disclosure, he now claims
24 that he never said that, so to the extent Mr. Barron was there
25 and Mr. Barron was taking notes of that proffer and his notes

1 are consistent with the report and inconsistent with
2 Mr. Hernandez Miguel's now memory, I think that that's
3 relevant, evidentiary and important to the case.

4 THE COURT: But what's the end game here, are you
5 going to call Mr. Barron to testify against his own client?

6 MR. LOPEZ: Well, the first case, I'd like to see the
7 notes to see whether or not there is an inconsistent statement.
8 If there is no inconsistent statement --

9 THE COURT: But you've been told, I think, by the
08:38AM 10 government that there's an inconsistent statement, right, so
11 you know that, or at least the government says there's an
12 inconsistent statement. Attorney notes are -- I mean, that's
13 the definition of work product, right?

14 MR. LOPEZ: Not when they're at a proffer session, and
15 it's not attorney-client privilege.

16 THE COURT: Work product.

17 MR. LOPEZ: What's that?

18 THE COURT: It's not that the statements were
19 privileged but that they're work product. I mean, that's what
08:39AM 20 attorney work product, quintessential attorney work product is
21 an attorney's notes of a witness interview.

22 MR. LOPEZ: With all due respect, your Honor, being a
23 note-taker at a proffer is not a work product. There's no --

24 THE COURT: So if someone subpoenaed your notes for
25 all your witness interviews, you wouldn't raise a work product

1 defense? I mean that seems odd to me. Again, it's work
2 product. It doesn't mean it can't be overcome. Work product
3 is not rights like a privilege.

4 MR. LOPEZ: Well, your Honor, the work product has to
5 have some legal thought process that goes into it. This is
6 simply taking notes of what his client said when he's in the
7 presence of numerous agents and assistant U.S. attorneys.

8 I'm not looking -- if there's a note there that shows
9 his mental impressions or opinions about that statement, I'm
08:40AM 10 not interested in that, I'm just interested in what did his
11 client say at that proffer session?

12 THE COURT: But suppose the notes are consistent with
13 what the government has told you, what then?

14 MR. LOPEZ: Then I won't call him as a witness.

15 THE COURT: And if they're inconsistent, meaning, you
16 know, he's right, he never did say that, then what happens?

17 MR. LOPEZ: Then I would call him as a witness.

18 THE COURT: Call Kevin Barron as a witness?

19 MR. LOPEZ: Yes.

08:40AM 20 THE COURT: Against his own client?

21 MR. LOPEZ: Yes.

22 THE COURT: To show -- I guess I'm not following this.

23 MR. LOPEZ: He was a witness to the statement and to
24 testify that on a prior occasion, Mr. Miguel Fernandez did in
25 fact say -- the position that Mr. Miguel Fernandez is now

1 taking is that the agent -- well, really two things. The
2 interpreter interpreted incorrectly, and the agent took it down
3 incorrectly, and to the extent that Mr. Barron was there as a
4 note-taker, and the notes reflect a consistency with the
5 agent's notes, it's more likely than not that
6 Mr. Miguel-Hernandez is mistaken about what he said that day as
7 opposed to his position now saying I never said that.

8 THE COURT: I guess, okay, if it's consistent with the
9 agent's notes, you've learned nothing, but if it's inconsistent
08:41AM 10 with the agent's notes, it would support --

11 MR. LOPEZ: Then I won't be calling him.

12 THE COURT: Mr. Hernandez-Miguel, so I'm not sure
13 either way how you call him. You know what I'm saying, either
14 it's consistent or inconsistent. If it's consistent with the
15 agent's notes, you can just call the agent; if it's
16 inconsistent, then inconsistent with the agent's notes, that
17 means it's consistent with the client's testimony, and you can
18 cross-examine the client. How do you call Barron -- what do
19 you get from Barron that you can't get from the agent or the
08:42AM 20 witness?

21 MR. LOPEZ: Obviously, your Honor, evidence that his
22 own attorney took down the same information that the agent did
23 is more powerful and more persuasive and more compelling than
24 the agent, which he can just dismissedly say, well, the agent
25 made a mistake, and I'm pretty sure the government is not going

1 to put the agent on to say, oh, no, no, I didn't make a
2 mistake.

3 THE COURT: All right. Is Mr. Barron here?

4 MR. BARRON: Yes, I am. I'm taking the liberty of
5 standing over here. I don't think that anything Mr. Lopez has
6 said takes him outside the rule of the *LaRouche Campaign* and
7 it's referenced to Nixon. I've discussed that on page 4 of the
8 memorandum. In reality, this is all information that can be
9 gained from the agent's reports.

08:43AM 10 Nothing further unless your Honor has any questions
11 about my memorandum. In other words, it doesn't make it past
12 the showing of evidentiary need.

13 THE COURT: Does the government have a position on
14 this?

15 MR. POHL: Mr. Barron alerted me to the fact that the
16 subpoena was issued yesterday. I've just had a chance briefly
17 to look at his papers this morning, but I think your Honor's
18 assessment is entirely correct.

19 Since it's going to come up, I can tell your Honor
08:43AM 20 that the sequence of events since we made that disclosure, so
21 there's a proffer. The proffer report of Mr. Hernandez-Miguel
22 from I think the middle of 2016 states -- that the report
23 itself states that the cooperating witness held down an 18th
24 Street gang member while Hernandez-Miguel stabbed him.

25 During pretrial preparation, Mr. Hernandez-Miguel said

1 I never said he held him down. We disclosed that because it
2 was obviously inconsistent with the proffer report. Mr. Lopez
3 then requested, and the government provided the agent notes of
4 that proffer, and the agent notes of the proffer, in my view
5 support Mr. Hernandez Miguel's statement that he never said it.

6 In other words, holding the witness down, the
7 cooperating witness holding him down is not in the notes, all
8 right, so how that's all going to play out, that's all classic
9 fought over cross-examination, but I think I can't imagine
08:44AM 10 there's going to be anything that's going to be -- from those
11 notes that you can't get from the sort of state of the evidence
12 as it is now, and, you know, I think I'm not sure Mr. Lopez'
13 brethren in the criminal defense bar would appreciate granting
14 a motion like this for a future defendant. For sound policy
15 reasons --

16 THE COURT: I'm not worried about their feelings.

17 MR. POHL: No, I understand that, but I think on the
18 state of the evidence as it is now, I think Mr. Barron is
19 right, there's nothing in those notes that can't be gotten
08:45AM 20 through other means. Thank you.

21 THE COURT: All right. I'm going to grant the motion
22 to quash. All right. I'm doing this at fairly high speed, but
23 it seems to me that it is problematic within the meaning of or
24 as set forth in U.S. vs. *LaRouche Campaign*, that there is an
25 insufficient need for the evidence balanced against the

1 problems that it raises.

2 I think the information, you know, is arguably
3 relevant to cross-examination, but that's about as far as it
4 goes. Information can be procured from other sources. At a
5 minimum, the agent and the witness themselves are also
6 translators and a translator in the room presumably could
7 testify.

8 I have grave concerns about the attorney-client
9 relationship and how this may be affected here, in particular,
08:46AM 10 the possibility that Mr. Barron could be called as a witness
11 against his own client to impeach his own client or that his
12 notes could be used to impeach his own client.

13 There may be circumstances in which that would be
14 required when there's no realistic alternative, but I don't see
15 this as such a case, and so I'm going to grant the motion to
16 quash and will also grant the emergency motion to seal.

17 I'm granting the motion to seal because I don't have
18 time to parse through what in here actually needs to be sealed
19 and what does not, and I'd ask Mr. Barron, for you to take a
08:47AM 20 further look at it, and if it can be either -- and, obviously,
21 we've talked about some things in open court. If a redacted
22 public version can be filed, I'm going to direct you to do that
23 because, obviously, in criminal cases, there is a strong
24 presumption in openness, but at least as a temporary matter,
25 I'm going to grant the motion to seal pending further

1 determination of whether it, in fact, needs to be sealed.

2 All right. What else do we have to talk about?

3 MR. BARRON: Thank you, your Honor.

4 THE COURT: Mr. Murphy.

5 MR. MURPHY: Yes, your Honor, a moment ago, the
6 government flashed on the screen a series of slides that it
7 intends to use in the ongoing.

8 THE COURT: Yes.

9 MR. MURPHY: We previously received notice of
08:48AM 10 disclosure that they wanted to use one of these slides, the
11 chart showing the photographs of the defendant and others. The
12 thing that was just flashed on the screen also included a
13 series of excerpts from the transcripts, which the government
14 sought to admit.

15 To be clear, all of those excerpts have been
16 previously produced to the defense. We hadn't seen them in the
17 government's opening presentation, so I would lodge the
18 objection that I lodged before about the linking of the names
19 to those transcripts before there is any testimony about them,
08:48AM 20 and I think calling them out in this way in the opening
21 statement before there is that testimony is prejudicial, and I
22 would object to the chart.

23 THE COURT: All right. First, to the extent it's part
24 of your general objection, that piece of it is preserved.
25 Second, all opening statements discuss evidence that has not

1 yet come in, and it's always on the assumption the evidence
2 will come in.

3 I don't know that I need to give the jury a caution in
4 the middle of the government's opening statement, but I will
5 see what they present, and if I think it requires a cautionary
6 instruction, I'll give it, but, again, all opening statements
7 talk about things that the jury has not yet heard, and I do
8 expect that the government will be able to lay the foundation
9 for putting the names on the transcript.

08:49AM 10 If the government can't do that, it's risking a
11 mistrial, as with anything anyone says in an opening statement,
12 you're always running that risk, so I'm not sure I view this as
13 being a terribly different situation, so I will overrule the
14 objection, but I will see what the government says and consider
15 at the time whether I need to say anything at that point or at
16 the conclusion of the government's opening.

17 MR. MURPHY: May I bring one other practical question
18 to the Court assuming evidence does start today?

19 THE COURT: Yes, I assume so.

08:50AM 20 MR. MURPHY: The Court has previously ruled that an
21 objection by one defendant is an objection by all --

22 THE COURT: Yes.

23 MR. MURPHY: -- to the testimony. I think the Court
24 is likely aware of the First Circuit's case in *Gordon*, ruling
25 in *Gordon*, which essentially said that the failure to describe

1 the reason for the objection would subject the objection to
2 plain error analysis, so I simply want to alert the Court that
3 there may be occasions when Mr. Norkunas says hearsay and I say
4 relevance. I think it's not ideal from the presentation of the
5 case to the jury, but I don't think that will be on this side
6 of the --

7 THE COURT: In fairness, Mr. Norkunas may want to
8 overrule your reasoning, Mr. Murphy it may go both ways.
9 That's a fair point, and just to be clear, when objections are
08:51AM 10 made, I want no argument in front of the jury other than maybe
11 a simple word like, "hearsay," "leading," "relevance,"
12 something like that. Everything else should occur at sidebar.

13 Mr. Pohl.

14 MR. POHL: Your Honor, thank you. I do hope and
15 expect that we'll get to evidence today, and the first witness
16 for the government would be Sergeant Detective Daley from the
17 Boston Police Department, who was one of the homicide
18 detectives who responded to the crime scene at Trenton Street,
19 which is where one of the murders that we'll be talking about
08:51AM 20 today occurred, and I want to flag a couple of things for the
21 Court.

22 I had a very, I think, productive discussion with
23 counsel, particularly with Mr. Murphy about sort of how to
24 present this type of evidence in this case in a way that I
25 think streamlines the case but doesn't, and, you know, makes

1 clear that why this evidence is being presented, but it also
2 makes clear that these defendants are not the parties that
3 actually physically committed the murder, and so to that end, I
4 think we will be presenting evidence through the detective
5 concerning the murder, and he will be identifying some
6 photographs of the victim, including the wounds.

7 That testimony, you know, if Mr. Martinez were still
8 in the case and we were having to prove that part of the case
9 to the jury, you know, we'd be doing the full presentation with
08:52AM 10 the medical examiner and all that, and I don't think that's
11 necessary in this case.

12 I think to the extent though that there are, you know,
13 403 or other kinds of objections to that evidence, I thought it
14 might make sense to take it up now, otherwise I think we'd be
15 in a position to roll through that testimony now, and, you
16 know, I think, I hope we'll be able to conclude that part of
17 the case today.

18 THE COURT: Am I correct, this is a murder that was
19 allegedly committed by murders of the clique but not these four
08:53AM 20 members of the clique essentially?

21 MR. POHL: Yes, that's essentially correct. The
22 person who committed the murder was part of another clique but
23 then was jumped into this clique for the murder. That would be
24 the government's contention, and so just for the Court's
25 edification, I think you have an exhibit binder in front of

1 you, your Honor. The exhibits that we're talking about would
2 be at 93. There would be a 9-1-1 call.

3 Oh, I should start, we have a stipulation as to the
4 admissibility of a 9-1-1 call that's Exhibit Number 91. I'll
5 be playing that first. The exhibits that we're talking about
6 are at 93, 94, 95. There's some surveillance videos that the
7 detective himself will be able to authenticate, and then at 101
8 are autopsy photographs of Mr. De Paz.

9 I think those are the items that are most likely to
08:54AM 10 draw a relevance objection, and I think it would make the most
11 sense to sort of resolve that now.

12 THE COURT: Okay. Mr. Murphy.

13 MR. MURPHY: Yes, your Honor, so Mr. Pohl is right
14 that we did have a discussion. I don't think any of the
15 defendants are going to be lodging proffer in the *Melendez-Diaz*
16 testimony -- objections to this testimony generally. I think
17 we do object, Number 1, to the entire line of testimony as to
18 its relevance. We should preserve that objection once the
19 detective takes the stand because we don't think that any of
08:54AM 20 this evidence is relative to the charges here.

21 As Mr. Pohl said, this is a homicide that I think it's
22 undisputed none of these defendants had anything to do with,
23 and Mr. Martinez was not a member of their clique at the time
24 of the homicide.

25 With respect to the autopsy photographs, your Honor,

1 we would also object to those, again, on relevance grounds but
2 also on irrelevance grounds because, again, there's no evidence
3 that any of the defendants here knew anything about the
4 injuries other than what Mr. Martinez may have said to certain
5 of them at certain occasions, so they weren't there, they
6 didn't see the injuries, and I don't think, there's not going
7 to be any dispute that Mr. Martinez committed this homicide or
8 any dispute about the cause, and I think that under the
9 circumstances, it would be eventually more prejudicial than
08:55AM 10 probative to show the autopsy photographs to the jury,
11 particularly those, and I don't know which ones the government
12 finally chose to use. I don't have that with me, but the ones
13 that show Mr. De Paz featured on the autopsy table.

14 THE COURT: All right. Mr. Pohl.

15 MR. POHL: Thank you, your Honor. So, you know, I
16 think by way of proffer, one of the things that the government
17 is going to show is that there was significant amount of
18 surveillance video that was obtained by the Boston Police
19 Department in the immediate aftermath of the homicide and that
08:56AM 20 one of the surveillance videos actually shows Joel Martinez
21 wiping a bloody knife as he walks away from the crime scene, so
22 the fact that the wounds are stab wounds and are consistent
23 with the video I think makes it relevant even just as a
24 stand-alone point, but, obviously, the nature of MS-13, the
25 fact that committing a violent crime is often the necessary

1 component to inclusion in the gang and promotion within the
2 gang is, you know, one of the facts that I expect several
3 witnesses will testify to during the trial, and I think we took
4 pains to sort of essentially only put in, as you can imagine,
5 there were dozens, hundreds, frankly, of photographs.

6 We took pains really to try to limit the photographs
7 to only those that would link Mr. Martinez to the video, link
8 Mr. Martinez to another recording where he admits to doing the
9 murder and actually makes sort of a thrusting motion, the
08:57AM 10 recordings are in Spanish, there's a transcript of it, but he
11 makes a thrusting motion on the video that's consistent with
12 him describing how he committed the murder, and I think for
13 those reasons, it is both relevant and admissible. Thank you.

14 THE COURT: All right. Let me do this. I'm sorry,
15 Mr. Iovieno.

16 MR. IOVIENO: Yes, your Honor, thank you. Just
17 briefly, just so we're clear, this occurred in September of
18 2015. Mr. Martinez was not beaten in, if you will, until
19 January of 2016, so no member of this so-called clique
08:58AM 20 participated in this, and also there's a death certificate that
21 lists the cause of death, and I think the photographs are 403,
22 certainly prejudicial given there's four of them, and the issue
23 of how the cause of death is really not disputed.

24 THE COURT: Okay. Let me do this. Let me -- we have
25 at least some period of time before we're going to get to this,

1 so let me think about that, and I'll make a ruling before the
2 witness testifies.

3 We're one juror short. I'll say it's not clear to me
4 that we need his face, which is 101.1, which doesn't seem to me
5 to move the ball forward particularly unless there's an issue
6 about his identification, but let me think about it.

7 All right. Anything else we can take up quickly while
8 we're waiting for our last juror?

9 MR. NORKUNAS: Judge, just on behalf of Mr. Martinez,
08:59AM 10 as Mr. Murphy used the term, and I would ask that any witness
11 to it, murder is a degree of culpability, it was a homicide,
12 and he's a homicide detective.

13 Murder implies certain things that a jury has to find
14 beyond a reasonable doubt, so any discussion of this, rather
15 than term it as a murder, that it's an unlawful killing, it's a
16 homicide, and I think that would be appropriate in the
17 circumstances that's being presented.

18 THE COURT: Mr. Pohl.

19 MR. POHL: I think -- I think it's really a
08:59AM 20 distinction without a difference in the context of this case,
21 Judge. I think, frankly, the natural way to describe this is
22 that it was a murder, and I don't think they'll be much dispute
23 about that from the recordings themselves. The video
24 recordings show two people chasing somebody down and then
25 wiping a knife afterwards, so I think the death certificate

1 says "homicide." That will be in, but I think it's appropriate
2 to call it a murder, and I think the detective would describe
3 it as such.

4 THE COURT: All right. Murder, of course, remind me,
5 under Massachusetts law, it encompasses multiple levels, in
6 other words, that doesn't necessarily mean first-degree murder?

7 MR. POHL: Correct.

8 THE COURT: I guess I'm not troubled in this context
9 by the use of the word "murder," but because these are
09:00AM 10 technical terms, and to the extent that there's a genuine
11 dispute, you know, if there are other homicides that arguably
12 are manslaughter or something lesser, I think we ought to try
13 to be more technical, and "homicide" is certainly the safer
14 word to use.

15 We're going to line up the jurors and bring them in.

16 THE CLERK: All rise for the jury.

17 (JURORS ENTERED THE COURTROOM.)

18 THE CLERK: Thank you. Be seated. Court is in
19 session.

09:06AM 20 THE COURT: All right. Ladies and gentlemen, welcome
21 back. Thank you again for your patience and cooperation.
22 You'll recall that at the end of yesterday, I said that I had a
23 few preliminary instructions or remarks that I wanted to give
24 that I would normally have given you right then and said I'm
25 going to do it now before the opening statements, and I want to

1 start by talking about your duties as jurors and also giving
2 you some preliminary, very brief, very summary preliminary
3 instructions on the law.

4 At the end of the trial, I'm going to give you
5 complete and detailed instructions on the law that you are to
6 follow. Those instructions will be in writing. Each one of
7 you will have your own copy. I'm going to read them aloud to
8 you, and you can follow along with me and take notes as you
9 choose and take them with you into the jury room.

09:07AM 10 The reason I'm giving you some instructions now
11 instead of waiting until the end of the trial is to try to give
12 you a bit of a framework for considering the evidence and to
13 help you understand the evidence and what you're going to be
14 asked to decide.

15 I don't want you to think that these are preliminary
16 instructions are the only ones that matter or that they're
17 somehow more important than the ones that come later. You must
18 apply the instructions that I give you at the end of the trial
19 as a whole.

09:07AM 20 All right. As the jury, it's your duty to decide from
21 the evidence what the facts are. You and you alone are the
22 judges of the facts. You'll hear the evidence, decide what the
23 facts are, and then apply those facts to the law as I give it
24 to you. You must follow the law as I explain it to you,
25 whether you agree with it or not.

1 Sometimes jurors are curious about what I think. For
2 example, whether I think a defendant is guilty or not, or
3 whether a particular witness is believable or not. My opinion,
4 if I have one, and I certainly do not have one now is not
5 relevant. It is your role, not mine, to decide those issues,
6 and you should not interpret anything I might say or do during
7 the trial as indicating what I think about a witness or what I
8 think your verdict ought to be.

9 As I said to you multiple times in the impanelment
09:08AM 10 process, your verdict must be based only on the evidence
11 presented in this courtroom. You must disregard anything you
12 may have read in a newspaper or on the Internet or seen on
13 television or heard on the radio. It's very important that you
14 decide this case only on the evidence presented in this
15 courtroom, and, again, any information outside the Court, the
16 lawyers don't have an opportunity to respond to it, to correct
17 it, to contradict it, or otherwise explain it, so you must
18 decide the case based solely on the evidence presented in the
19 courtroom.

09:08AM 20 Again, this is a criminal case. I'll sometimes refer
21 to the government as the prosecution. All four defendants are
22 charged with one particular crime. It's conspiracy to conduct
23 or participate in the affairs of an enterprise through a
24 pattern of racketeering activity. We'll call that
25 "racketeering conspiracy" as a shorthand way of describing it.

1 Two defendants are also charged with conspiracy to
2 possess cocaine with intent to distribute it and to distribute
3 cocaine. The charges presented against the defendant are
4 called an indictment. An indictment is simply a description of
5 the charges against them. It's an accusation. It's not
6 evidence of anything. All four defendants have pleaded not
7 guilty to those charges.

8 They're presumed innocent. The government must prove
9 their guilt beyond a reasonable doubt. The defendants do not
09:09AM 10 have to prove their innocence. They do not have to put on any
11 evidence, they do not have to testify, they don't have to do
12 anything at all. Those rights are guaranteed by the United
13 States Constitution.

14 At the end of the trial, you'll be asked to render a
15 verdict of guilty or not guilty. Your verdict will have to be
16 unanimous, that is, as to each count and each defendant. You
17 may convict each defendant only if every one of you agrees that
18 he is guilty of that crime beyond a reasonable doubt.

19 All right. Although the defendants are being tried
09:10AM 20 together, you must take care to give separate consideration to
21 each defendant. You'll have to consider each count and each
22 defendant's involvement in that count separately.

23 Again, it's really six decisions you'll have to make.
24 We have four defendants all charged with one crime of
25 racketeering conspiracy and two defendants charged with drug

1 conspiracy, and you'll be asked to return a separate verdict as
2 to each defendant for each count.

3 I'm going to give you the barest thumbnail sketch of
4 what the defendants are charged with. Unfortunately, the crime
5 of conspiracy to commit racketeering is somewhat complex. It
6 involves terms that have technical meanings. I'm going to give
7 you the briefest overview now so you're not hearing the terms
8 for the first time at the end of the trial, but, again, at the
9 end of the trial, you will have instructions in writing. I'll
09:11AM 10 go through this carefully, and I'll hopefully explain to you
11 everything you need to know.

12 Every crime has certain things that we call elements.
13 They are things that the government has to prove beyond a
14 reasonable doubt to convict someone of that crime. The crime
15 of racketeering conspiracy has basically three elements. The
16 first is that there was an agreement among two or more persons
17 to participate in an enterprise affecting interstate commerce
18 through a pattern of racketeering activity.

19 The second is that the defendant knowingly and
09:11AM 20 willfully became a member of that agreement, and the third is
21 that the defendant agreed that some member or members of the
22 conspiracy agreed to commit two racketeering acts.

23 Let me just briefly touch on some of those concepts.
24 I talked about an agreement. Basically a "conspiracy" is an
25 agreement among two or more persons to commit a crime or to

1 achieve an unlawful object. An "enterprise" is a group of
2 people who have associated together for a common purpose of
3 engaging in a course of conduct over a period of time.

4 Here, the alleged enterprise is a gang. The
5 government says that the enterprise is a gang called MS-13.
6 Again, some member or members of the conspiracy have to commit
7 two racketeering acts or agree to commit two racketeering acts.
8 The indictment charges that the racketeering acts are separate
9 crimes of murder, attempted murder, robbery and drug
09:12AM 10 trafficking.

11 Again, these are very technical terms. What I've said
12 to you is not precise. I don't want you to rely on it at the
13 end of the day, you can rely on my instructions. I'm just
14 trying to give you the basic outline of what this charge is,
15 and, again, Defendants Martinez and Larios are also charged
16 with essentially a drug trafficking conspiracy. That as well
17 has elements. The first element is that there was a conspiracy
18 to possess cocaine with intent to distribute it and to
19 distribute it.

09:13AM 20 The second element is that the defendant in question
21 knew of the conspiracy. The third is that the defendant
22 knowingly and voluntarily joined, participated in the
23 conspiracy. And, fourth, that it was reasonably foreseeable to
24 the defendant that the conspiracy would involve the
25 distribution of certain amount of cocaine.

1 And, again, that's only the barest outline of what it
2 is the government has to prove, and at the end of the trial,
3 I'll give you final instructions on those matters. Those
4 instructions will govern your deliberations, and if I say
5 anything that's inconsistent with that, those instructions are
6 what will control.

7 All right. I've talked about the word "evidence."
8 The evidence in this case will probably include the testimony
9 of witnesses. It will include documents. It may include
09:13AM 10 objects that come into evidence as exhibits and any facts that
11 the parties may have agreed on.

12 The evidence consists of all the testimony, both on
13 direct and cross-examination and all of the exhibits regardless
14 of who introduced them.

15 There are rules that control what you may consider as
16 evidence. If a lawyer asks a question or offers something into
17 evidence and the other side thinks it's not permitted, the
18 lawyer may object. It may be necessary for me to have a
19 discussion with the lawyers outside of your hearing at a
09:14AM 20 conference at sidebar.

21 The purpose of those conferences is so I can make a
22 decision. I don't keep things from you just to frustrate you,
23 but, of course, it's important sometimes for me to discuss
24 things outside of your earshot.

25 I'll do what I can to keep those conferences to a

1 minimum. Certain things are not evidence. Statements and
2 arguments by lawyers are not evidence. The lawyers are not the
3 witnesses. A question by a lawyer standing alone is not
4 evidence. Again, the lawyer is not the witness. You have to
5 take the question and the answer together.

6 Objections are not evidence. Lawyers have a duty to
7 object if they think something is improper, and if I sustain an
8 objection, if I keep something out, you should ignore the
9 question or ignore the exhibit and not try to guess or
09:15AM 10 speculate what the answer might have been or the object or
11 exhibit might have included.

12 I hope this doesn't happen, but if I have to tell you
13 to disregard something, it's not evidence and you can't
14 consider it as part of your evidence. Again, anything you see
15 or hear outside the courtroom is not evidence.

16 Then, finally, sometimes a particular piece of
17 evidence might be received for a limited purpose only. In
18 other words, I might tell you you can use it for purpose X but
19 not for any other purpose, and I'll do that, I'll instruct you
09:15AM 20 if that happens and give instructions as we go along.

21 Deciding what the facts are. You may have to decide
22 what testimony you believe and what testimony you do not
23 believe. You may believe everything a witness says or part of
24 it or none of it. It is entirely up to you.

25 Now, many people watch television shows or movies

1 about courts or lawyers of the criminal justice system, and
2 often people are affected by that when they serve as jurors.
3 Television shows and movies can create false expectations about
4 real life, for example, how a trial is going to proceed or what
5 evidence might look like.

6 You must decide this case on the evidence in the Court
7 and the law as I give it to you, and do not decide this case
8 even in part based on something you saw on TV or in a movie.
9 It's improper and it's unfair.

09:16AM 10 All right. Let me turn next to the subject of how
11 you're going to conduct yourselves during the trial. I've
12 touched on some of this already, but I'm going to remind you.
13 The first rule is that you should not talk among yourselves
14 about the case until the end when you go to the jury room to
15 decide the case. You should feel free to get to know one
16 another, but you should talk about the weather or the Patriots
17 or your families or anything other than this case.

18 What's particularly important is that you not start to
19 pair up and have side discussions about the case outside the
09:17AM 20 hearing of others. Again, whether you intend to or not, you're
21 going to start to influence each other, and it's important that
22 you wait until the end and that you not influence each other
23 outside of everyone else's earshot, so wait until the end and
24 make sure everyone hears everything that anyone has to say
25 about this case.

1 The second rule is not to make up your mind about what
2 the verdict should be until you've gone to the jury room to
3 decide the case. The evidence has to be heard in some order,
4 something has to be first, and something has to be last, and it
5 could be that the last question on the last day is the most
6 important thing in the case, and it's important that you keep
7 an open mind until the end. There's no really other way to do
8 it, and you just have to wait and listen patiently before
9 making up your mind.

09:17AM 10 Next, and I talked about this the other day, don't
11 talk with anyone else about this case until I've discharged you
12 as jurors. Once I discharge you, you're free to talk as you
13 may wish, but during the trial, don't talk with anyone else,
14 and that includes members of your family, your friends, your
15 loved ones. Again, it's the most natural thing in the world
16 for your family members and friends to ask you about the case,
17 what you think or to tell you something that they saw on TV or
18 they read about something.

19 And, again, I'm instructing you, you cannot have that
09:18AM 20 conversation. Again, your friends and your loved ones are
21 going to influence you whether they're trying to or not,
22 whether you want them to or not, they don't mean any harm, but
23 they're not here, they haven't licensed to the evidence, they
24 haven't seen the evidence, and they haven't listened to my
25 instructions.

1 Go ahead and blame me, if you want, that's fine, you
2 can say the Judge ordered you not to talk about it, but it's a
3 very important rule.

4 Next, do not mention or discuss this case in any way,
5 shape or form on any social network or in any other electronic
6 form. This is very important. As I'm sure you know, in the
7 modern world, a lot of people talk about every single they do
8 on Facebook or they tweet about it, and you cannot do that
9 here. If you do it and I find out about it, I may have to
09:19AM 10 declare a mistrial. We may have to start all over again, which
11 will be a huge waste of time and resources, so please do not do
12 it.

13 Next, don't let anyone talk to you about the case. If
14 they persist, please report that to me as soon as you can.

15 Next, please don't talk with any of the parties or the
16 lawyers or the witnesses or anyone involved with the case. You
17 shouldn't really say hello to them. It's important that you do
18 justice but you give the appearance of doing justice, so let's
19 say someone saw you waiting for the elevator and you began
09:20AM 20 chatting with one of the lawyers, and what you were talking
21 about was Rob Gronkowski's concussion, not about the case.
22 Other people may not know that. If we hear about it, I'll have
23 to hold a hearing, I'll have to find out what the conversation
24 was about, so please don't do it. Don't even say hello to
25 people, frankly, and if they're not saying hello to you,

1 they're not being rude, they're following my instructions as
2 well.

3 Again, let me remind you one more time, don't read any
4 news stories or articles about the case or anyone having to do
5 with it.

6 Next, don't do your own research about anything. No
7 matter how minor it is. Don't look up anything on the
8 Internet. If you think some piece of information is missing,
9 or you're curious, you're not allowed to find it out on your
09:20AM 10 own. That's true even if you think it's harmless, even if
11 you're just curious, even if you think it doesn't matter or
12 you're frustrated, you have to wait until the end of the trial.
13 You cannot do your own research. Please be respectful of the
14 Court. Please don't bring food or drink into the courtroom,
15 please don't chew gum during the trial, and try to dress
16 appropriately.

17 During the course of the trial, if you have a problem
18 of some kind, I'll try to take care of it. Sometimes a lawyer
19 mumbles or they are facing the wrong way and you can't hear the
09:21AM 20 question, please raise your hand and we'll have it repeated.
21 If you need a glass of water or a Kleenex, let us know, we'll
22 try to give you one.

23 If you need a short break for any reason, we'll try to
24 take a short break, we'll do the best we can to make sure that
25 you're comfortable and accommodated. If you need to

1 communicate with me and we're not in court, please give a
2 signed note to the Court security officer to give to me.
3 Again, these rules are important. They're intended to make
4 sure the trial is fair, and I instruct you to obey them.

5 All right. I'm going to do permit you to take notes
6 in this case. You should have note pads and a pencil or a pen,
7 and there should be a number on the cover of the notebook that
8 will be your juror seat number.

9 I want to give you a couple cautions about taking
09:22AM 10 notes. The first caution is don't allow note-taking to
11 distract you. You need to listen carefully to the testimony.
12 It's important that you observe the witnesses and listen to
13 them. If you'd rather not take notes at all, that's fine.
14 Some people take copious notes, some take none at all, some
15 people only write down a few things. It's entirely up to you.

16 Please remember that not everything you write down or
17 that is written down is necessarily what was said. Don't
18 assume when you get back to the jury room that just because
19 something is in someone's notes that it necessarily happened.

09:22AM 20 What people often do is they write down the question
21 and not the answer because they don't have time to get the
22 whole thing written down, so notes are an aid to recollection.
23 That's all they are, and the fact that it's written down
24 doesn't necessarily mean that it's true. It could be true but
25 it doesn't necessarily mean that.

1 You should take your notebooks with you to the jury
2 room at every recess. You can't take your notes home. You
3 can't take them outside the courtroom or the jury room. The
4 clerk will collect them at the end of every day and place them
5 in the vault. They'll be returned to you the next morning, and
6 when the case is over, the notes will be destroyed. No one but
7 you will ever look at them.

8 Now, as you can see, we have a court reporter who's
9 creating a record of everything that happens in this trial.

09:23AM 10 Sometimes jurors think they will have a transcript when they go
11 back to the jury room, and that is not true. You will not have
12 a transcript. There are a number of reasons for that, but one
13 of them is strictly practical. There's usually not time to
14 prepare one.

15 The Court reporter has a very difficult job. It's
16 very time consuming to create a raw record and turn it into a
17 final transcript, so you won't have a transcript, and you
18 should listen very carefully and take whatever notes you think
19 you may need to help you remember.

09:23AM 20 All right. Let me quickly outline the trial. When
21 I'm done speaking, which will be in a couple minutes, we will
22 begin with the opening statements. The government in its
23 opening statement will tell you about the evidence that it
24 expects to introduce. The opening statement is not itself
25 evidence. Again, the lawyers aren't witnesses. Its purpose is

1 to help you understand what the evidence is likely to be.

2 The defense attorneys will then open for each of their
3 clients. The government's evidence will come next. Of course,
4 the defendants are permitted to cross-examine any of the
5 government witnesses, and at the close of the government's
6 evidence, the defendants may present evidence if they choose.
7 Again, they're not required to do so, and, again, they are
8 presumed innocent. The government must prove their guilt
9 beyond a reasonable doubt. The defendants do not have to prove
09:24AM 10 their innocence, do not have to testify, and do not have to put
11 on any evidence.

12 Once the evidence is closed, the government and the
13 defense will each be given time for closing arguments, and I
14 will then instruct you on the law, and you will leave the
15 courtroom together to deliberate and render your verdict. You
16 will never have to reveal your deliberations or explain your
17 verdict to anyone.

18 All right. As I indicated, our normal trial day will
19 be from nine in the morning until one afternoon. You might
09:25AM 20 wonder why we do it that way rather than going all day and
21 trying to get the case over with sooner.

22 One of the things we found over the years is the cases
23 don't really move much faster or any faster at all if we try to
24 go all day. There's lots of reasons for that. One of them is
25 that I have other work to do, sometimes on this case, sometimes

1 on other cases, and what happens is the jurors wind up sitting
2 around waiting while I attend to other business, which can be
3 very frustrating.

4 The lawyers know that jurors are tired and not paying
5 much attention in the afternoon often, and so they sometimes
6 will pad the case with witnesses that don't matter for late
7 afternoon because they know everyone just wants to get out of
8 there. The cases tend to drag in the afternoon, so we're going
9 to go from 9 to 1, but to make this work, we have to be
09:26AM 10 disciplined about it. We have to keep to a tight schedule.

11 I want to try to begin every day at 9:00 sharp, which
12 means, again, you say need to be here before that to make sure
13 we start on time. We'll take a break at about 10:30, we'll
14 take another break at about noon. Those will be as short as
15 possible to let you use the facilities and stretch your legs,
16 hopefully about five or ten minutes, and we'll go until one
17 o'clock.

18 If it looks like we're falling behind, I might require
19 an afternoon session or start a little earlier or go a little
09:26AM 20 later. I won't do that without asking you to make sure you can
21 do it. I understand that one of the advantages of quitting
22 every day at one, it's easier on jurors, it's easier for
23 parents of school-aged children, it's easier for people who
24 need to check in at their office at work, you may have made
25 other plans, so I'll check with you, but it's at least possible

1 we may need to do that.

2 When the time comes for you to deliberate, you'll meet
3 all day until you reach a decision. It may not take that long,
4 but you should plan for that possibility when the time comes.

5 All right. I have one final instruction before I turn
6 it over to the government for their opening. Under our
7 Constitution, all persons are equal before the law. Everyone
8 accused of a crime is entitled to a fair trial. You should not
9 hesitate to convict if you believe that the government has met
09:27AM 10 its burden of proof. You should not hesitate to acquit if you
11 think it has not, but you must be completely and scrupulously
12 open-minded, honest and fair. That is your duty as jurors, and
13 that's your duty as citizens of the United States, so, again,
14 thank you for your patience and for your jury service, and we
15 will now hear from the government for its opening statement.

16 All right, Ms. Lawrence.

17 OPENING STATEMENT

18 MS. LAWRENCE: Good morning. This case is about
19 MS-13, La Mara Salvatrucha. You will hear that the four
09:29AM 20 defendants on trial, those four men seated at the tables behind
21 me are members of MS-13. Understanding what MS-13 is about is
22 critical to understanding what this trial is about. Put
23 simply, MS-13 is about violence, violence against rivals,
24 violence against snitches, violence against those who don't
25 respect MS-13 and the Mara. MS-13 uses violence to eliminate

1 rivals, instill fear and control turf.

2 MS-13 is a criminal street gang with origins in
3 Los Angeles and El Salvador and thousands of members spread
4 across Central America, United States and here in
5 Massachusetts.

6 Those members are organized into local subgroups
7 called cliques. You will hear that all four defendants are
8 members of the Eastside Loco Salvatruchas or ESLS clique of
9 MS-13. Each clique has its own leaders called the first word
09:30AM 10 and word or runners. The leaders run clique meetings, collect
11 dues from members, issue orders, take reports of violence
12 committed by clique members, promote new members and mete out
13 punishments.

14 You will hear that Herzzon Sandoval was the first
15 word, and Edwin Guzman was the second word for ESLS, and
16 Cesar Martinez and Erick Argueta Larios were full members or
17 homeboys of the clique.

18 Each clique operates more or less independently under
19 the larger MS-13 umbrella. They make periodic reports to MS-13
09:30AM 20 in El Salvador and communicate with other cliques locally and
21 regionally in the United States. In many ways, the MS-13
22 clique is like a local McDonald's Restaurant independently
23 owned and operated but part of a larger corporate enterprise,
24 and like McDonald's markets itself with recognizable colors,
25 logos and food names, MS-13 markets itself with colors,

1 numbers, hand signs, tattoos and gang names reflecting the
2 gang's purpose, origins and mission.

3 MS-13 members wear the colors blue and white
4 representing the country flags of El Salvador, Honduras and
5 Guatemala. They use the number 13 representing M, the 13th
6 letter of the alphabet and the number 503, the area code for
7 El Salvador.

8 They flash the gang's hand signs representing the
9 letters M and S and the number 13 and the devil's horn to greet
09:31AM 10 each other and make themselves known to rivals, and many
11 literally brand themselves with MS-13 tattoos.

12 MS-13 members also take new names when they join the
13 gang, and you will hear those gang names used throughout this
14 trial. Herzzon Sandoval is Casper. Edwin Guzman is Playa.
15 Cesar Martinez is Checha. Edwin Guzman is Lobo.

16 MS-13 also has rules, and those rules reflect its
17 violent purpose, attack and kill rivals on sight, kill
18 informants, beat or kill members who disobey or disrespect the
19 gang. You will hear evidence in this trial that MS-13 members
09:32AM 20 did in fact attack and kill rival gang members, that they
21 wanted to kill informants, and that they did beat members who
22 broke MS-13 rules.

23 In other words, these rules were not mere talking
24 points, they were calls to action for all MS-13 members. MS-13
25 demands absolute commitment and loyalty from its members. A

1 person doesn't just casually join MS-13 and show up at the club
2 whenever he feels like it. No, joining MS-13 is a commitment.
3 It's a process with prospective members moving up the ranks by
4 proving that they are all in for the gang, meaning that they
5 are ready, willing and able to take action and fulfill the
6 gang's violent purpose.

7 MS-13 rewards those who prove themselves worthy with
8 violence. The gang initiates new members with the 13-second
9 beating by members of its own clique. It also punishes those
09:33AM 10 who break gang rules by beating them for 13 seconds. During
11 the trial, you will see a recording of an MS-13 initiation
12 ceremony, which they call a jump-in or a beat-in that took
13 place at an Eastside or ESLS clique meeting. Casper, Playa,
14 Checha, and Lobo were all at that meeting.

15 Casper, the clique's leader, decided which homeboys
16 present would do the beating, while Playa counted out loud to
17 13. You will also hear recordings of MS-13 members being
18 punished at clique meetings with 13-second beatings, and,
19 again, some or all of the defendants were present at those
09:34AM 20 meetings.

21 These and other recordings made by a cooperating
22 witness who infiltrated MS-13 will give you a front row seat to
23 the inner workings of the gang and the violence that was
24 committed and glorified on behalf of MS-13.

25 My name is Kelly Lawrence. Seated at counsel table is

1 Christopher Pohl. We represent the government in this case.
2 I'm here now just to give you an overview of the evidence
3 you'll hear at the trial so that you'll better understand the
4 facts and evidence that you'll have in light of the law that
5 the Judge will give you at the end of the case.

6 I said before that this trial is about MS-13, and it
7 is because MS-13 is a criminal enterprise engaged in
8 racketeering, and all four of these defendants on trial agreed
9 to be part of it, so you'll be hearing a lot about MS-13, the
09:35AM 10 Eastside clique, other local cliques and MS-13 members during
11 the coming weeks.

12 You'll also be hearing, of course, a lot about these
13 four defendants, what they did and what they said. In fact,
14 you'll actually get to see what they did and hear what they
15 said because it was caught on tape. The defendants' own words
16 and actions captioned on tape when they thought no one else was
17 listening. Those recordings are in Spanish, but you'll have
18 English transcripts to read, and you'll also get to see some
19 video clips as well.

09:35AM 20 The recordings were made by what is called a
21 cooperating witness. During this investigation, the FBI
22 identified an individual that it believed could infiltrate
23 MS-13 and collect evidence of the gang 's criminal activities.
24 For that to work, the individual had to make the gang believe
25 that he was one of them, that he was ready, willing and able to

1 commit to the gang and its violent mission, and it worked.

2 The cooperating witness succeeded in earning the trust
3 and the respect of the MS-13 members, and they felt comfortable
4 enough with him to talk freely about the gang and its criminal
5 activities. He was so successful, in fact, that these
6 defendants jumped him into their clique. They made him an
7 Eastside homeboy. That gave the cooperating witness an
8 all-access back stage pass to the MS-13 criminal enterprise.
9 Those recordings made by the cooperating witness capture the
09:36AM 10 inner workings of MS-13, and they will leave you with no doubt
11 that all four of these defendants are guilty of the charged
12 racketeering conspiracy.

13 I've already told you a little bit about MS-13, the
14 gang, the enterprise, and now I want to focus on these four
15 defendants, Casper, Playa, Checha, and Lobo and their clique,
16 ESLS.

17 You'll hear that ESLS was a mature clique. It had
18 been around for awhile, and its leaders, Casper and Playa, and
19 its members, Checha, Lobo and others were old. Typically, with
09:37AM 20 maturity comes age, with maturity and age comes respect. These
21 defendants thought so. They thought they had earned respect
22 from MS-13 for the killings and violence that they had
23 committed in the past.

24 At an ELS clique meeting in October, 2015, Casper told
25 the members present, "There are many of us here who have

1 killed, homie, and we deserve their respect, and not to have
2 them trying to pilot us," but you will hear that MS-13 doesn't
3 rest on its laurels, it demands action that its members
4 continue to hunt down, kill and attack rivals, that it continue
5 to ferret out informants, keep members in line and protect
6 MS-13 turf.

7 The defendants knew this because they were told by
8 leaders in El Salvador that ESLS had to get with the program
9 literally, that they had to follow the rules and orders of the
09:38AM 10 regional East Coast Program, that they had to keep committing
11 violence and keep paying money to support the mission of MS-13,
12 and if they didn't, the MS-13 leadership would issue what's
13 called a green light in order to kill every member of the ESLS
14 clique.

15 Again, this is Casper speaking at the October 24, 2015
16 meeting. What they said is that yes, they might actually
17 decide to give the green light for the clique, but, bullshit,
18 you can't do that because the clique here is already
19 established, homeboy.

09:38AM 20 In other recordings, you'll hear the defendants talk
21 about how they should respond to El Salvador's demands, tough
22 talk about quitting the East Coast Program, joining another
23 program or starting their own, but what you won't hear is any
24 talk about quitting MS-13. Instead, you'll hear that the
25 defendants were fully committed to MS-13.

1 The recording made on December 6, 2015, "It's the same
2 barrio, MS-13. The dude is going to the MS-13 barrio, homeboy,
3 and we belong to the MS-13." Feeling their age and pressure
4 from El Salvador, the defendants ramped up their recruiting
5 efforts for the Eastside clique.

6 In December, 2015, a young member of the Everett Loco
7 Salvatrucha clique named Animal brutally murdered a rival gang
8 member in broad daylight on the streets of East Boston. When
9 the defendants heard that Animal was unhappy with its own
09:39AM 10 clique because it had refused to promote him to homeboy for the
11 murder, ESLS scooped him up.

12 In early, December, 2015, Casper invited Animal and a
13 few of his young friends to come check out ESLS. "As I was
14 explaining, homie, come by this area, homie, you'll meet all of
15 us, you know, you'll find out what we think as a group, homie,
16 and if your way of thinking coordinates with ours, then it's
17 great and everything will be solid, and we'll see what
18 decisions we will make because it's not only my decision, they
19 all have to check you out, too, you know."

09:40AM 20 During the next several weekends, Animals and his pals
21 checked out ESLS, and ESLS checked out them. Eastside homeboys
22 Tigre and Brujo -- their pictures are on the chart -- took
23 these young guys out on missions hunting for rivals to attack
24 and kill. By MS-13 standards, these missions were widely
25 successful, Animal and his crew committed two attempted murders

1 during his evaluation period, and he bragged about both of them
2 on tape, and Brujo and Tigre reported these violent acts to
3 Casper to make sure that Animal and young friends would get
4 credit for what they had done.

5 Casper, Playa, Checha and Lobo were also present for
6 the next Eastside meeting in early January, 2016. The primary
7 topic of that meeting was Animal. This meeting, like many
8 others, was recorded on audio and video, so you'll get a
9 transcript of what was said, and you'll see clips, video clips
09:41AM 10 of what they did.

11 You'll hear that the defendants all wanted Animal to
12 join ESLS so they could take credit for his murder. As I
13 explained earlier, the murder of a rival gang member is like
14 the MS-13 golden ticket. It earns the killer and his clique
15 respect from other MS-13 homeboys and cliques, and it proves
16 that you are solid with the gang.

17 Remember, before the defendants brought Animal into
18 the Eastside clique, ESLS was on shaky ground. The leaders in
19 El Salvador were unhappy with Casper's leadership and the
09:42AM 20 clique's failure to pay dues and report violence, so much so
21 that they were thinking of issuing a green light or an order to
22 kill the entire clique.

23 Animal was the answer to that problem, and all of the
24 Eastside homeboys knew it. Jumping Animal into the clique,
25 taking credit for his murder and recruiting the young friends

1 who were hungry to prove themselves on the street with acts of
2 violence would breathe new life into ESLS.

3 At that January meeting, Casper spoke to the assembled
4 members there, "now, look, I'm going to tell you something,
5 homie, we need the new generation of Eastside, and thanks for
6 the wisdom that we have gained over the years, homie, we have
7 to pass it along, dude, so that the new Eastside clique can
8 come and not think badly that we're going to fuck them over
9 because, shit, we are the Maras, and the fuckers here will fuck
09:42AM 10 it up, but what I am trying to say, that you guys are going to
11 be the next generation, that's what he's talking about, the
12 next generation of ESLS."

13 During this January clique meeting, you'll hear
14 Casper, Playa, Lobo and other Eastside homeboys strategizing
15 ways to hide Animal from the police. They planned to rent him
16 a room in a safer neighborhood that didn't have as much police
17 heat on it investigating the murder he had committed, they
18 planned to bring him food so he could avoid being out on the
19 streets. They told him to keep a low profile and deny his
09:43AM 20 MS-13 membership and the murder to any civilians or police that
21 he talked to, but if anyone from MS-13 asked, he was to say
22 that he did the murder, take credit for the murder, and, more
23 importantly, say that he did it for the Eastsides.

24 The gang also talked of getting Animal a job so he
25 could pay his own way and of smoothing things over with the

1 Everett clique, who was none too happy about having Animal
2 taken away from them.

3 Finally, at the end of the clique meeting, Casper
4 ordered Animal jumped in to the clique with a 13-second
5 beating. Casper identified which homeboys would do the
6 beating, and Playa counted to 13. You will see a video of that
7 beating later in the trial.

8 During the coming weeks, you'll hear more evidence of
9 the defendant's MS-13 membership and activities. You'll hear
09:44AM 10 about other murders and attempted murders committed by ESLS
11 homeboys and other MS-13 members. You'll hear about clique
12 guns that members used on missions to attack rivals and to
13 defend themselves from rival attacks.

14 You'll hear about Eastside members paying dues and
15 using money to pay human smugglers or coyotes to bring deported
16 clique members back to the United States. Some of this
17 evidence, as we've already talked about, will be video clips
18 and transcripts of the defendant's own words recorded by the
19 informant who infiltrated the gang. Some of it will be
09:45AM 20 physical evidence, like guns and pictures of crime scenes.

21 Some of it will be testimony from a witness who has expertise
22 and experience investigating MS-13, and he can tell you about
23 the gang's history, purpose, its operation, structure, symbols,
24 leadership and the like.

25 Some of it will be testimony from witnesses who

1 participated in the investigation of the gang's criminal
2 activities, and they can tell you about the steps they took to
3 identify these individuals and gather evidence of their
4 criminal activities, and some of it will be testimony from
5 MS-13 members who belonged to the defendant's own clique, who
6 committed violent crimes and who have pled guilty and admitted
7 responsibility for those crimes.

8 These cooperating witnesses were established Eastside
9 clique members. They were homeboys, just like the defendants
09:45AM 10 in this case. They knew the defendants for years. They knew
11 who they are, they will tell you who they are, what they belong
12 to, and what they did.

13 Now, these witnesses, these MS-13 members, they
14 committed violent crimes, and one of them engaged in drug
15 trafficking. Their records are far from pristine, but they
16 will tell you about what they did, they will tell you who they
17 did it with, and they will tell you why. In short, they will
18 give you a view of MS-13 from the inside, and you will see that
19 their testimony matches up with the other evidence you'll hear,
09:46AM 20 the recordings, the physical evidence, and the testimony of
21 other witnesses.

22 I want to switch gears for a minute and talk to you
23 about the charges in this case. The Judge explained to you
24 earlier, and I will not repeat it word for word but just a
25 quick summary of all four defendants. Casper, Playa, Casper,

1 and Lobo are charged with conspiracy. Two defendants, Checha
2 and Lobo, are also charged with conspiracy to distribute
3 cocaine. The Judge will give you the law at the end of the
4 case, but I want to talk just about a few key terms that help
5 you evaluate all of the evidence you are about to hear.

6 First, "Conspiracy." Conspiracy is just an agreement
7 to commit a crime. In this case, all four defendants agreed to
8 join MS-13 and commit the crime of racketeering. By there
9 agreeing to commit the crime of racketeering, the defendants
09:47AM 10 simply agreed that some member or some members of the MS-13
11 conspiracy would commit two or more racketeering acts. The
12 defendants themselves did not actually have to murder or
13 attempt to murder or distribute drugs to be guilty of this
14 conspiracy.

15 "An Enterprise." An enterprise is essentially an
16 organized group of people working together over time to a
17 common goal. MS-13 is an enterprise. It has an organized
18 structure, membership that changes a bit from time to time but
19 has with leadership, it has rules and it has a mission.

09:47AM 20 "Interstate Commerce." The activities of MS-13
21 affected interstate commerce. That is an essential element of
22 this crime. You'll hear that the defendant made phone calls to
23 MS-13 members in El Salvador to discuss gang business and
24 activities. You'll hear that the defendants collected money
25 from clique members to pay human smugglers to bring deported

1 clique members back to the United States. You'll also hear
2 evidence of guns that were manufactured in other states and
3 countries that ended up in the hands of the defendants and
4 other ESLS members here in Massachusetts.

5 "Racketeering." There are a number of different
6 activities that can be included in racketeering. The ones
7 you'll hear about in this trial primarily are murder, attempted
8 murder and drug trafficking.

9 You'll hear that members of MS-13 committed at least
09:48AM 10 two acts of murder, attempted murder and drug trafficking or a
11 combination of those on behalf of the MS-13 enterprise.
12 Separate from the racketeering conspiracy, Checha and Lobo are
13 charged with a drug distribution conspiracy. This means that
14 they agreed with one or more other people to distribute
15 cocaine, and they took some affirmative step to make that
16 happen.

17 In this case, the FBI used an investigative technique
18 called a drug protection detail. Essentially the FBI through
19 its cooperating witness offered the defendants an
09:49AM 20 opportunity -- sorry, the defendants and other members of
21 MS-13, as you'll hear, the opportunity to get paid for
22 protecting kilogram-size shipments of cocaine.

23 The evidence will show on separate occasions Checha
24 and Lobo both jumped at this opportunity. They thought they
25 were being paid \$500 to protect the delivery of kilograms of

1 cocaine from a source in Massachusetts to a buyer in
2 New Hampshire.

3 In fact, the FBI was in control of the entire
4 operation from start to finish. You will hear that both of the
5 defendants on tape in the days leading up to the drug deals
6 confirming that they were ready, willing and able to commit
7 this crime. Checha agreed to and did distribute 1 kilogram of
8 cocaine in February of 2014 and Lobo agreed to and did
9 distribute 5 kilograms of cocaine in December of 2014.

09:50AM 10 You'll also hear that other Eastside homeboys,
11 including one of those cooperating witnesses I talked about
12 earlier and other MS-13 members from different local cliques
13 participated in these drug protection details. They agreed to
14 do the deal, they got paid to do the deal, and they
15 participated in the deal. Those are the charges.

16 I talked about some of the evidence that relates to
17 those charges, and you will hear that and more during the
18 trial. That evidence will prove that Checha and Lobo agreed to
19 distribute kilogram quantities of cocaine, and that evidence
09:50AM 20 will prove that Casper, Playa, Checha, and Lobo were members of
21 MS-13, that MS-13 was a criminal enterprise, and that all four
22 defendants agreed that some member or members of that MS-13
23 conspiracy would commit two or more racketeering acts.

24 At the end of this trial, my colleague is going to
25 stand before you, and he's going to ask you to return the only

1 verdict that is consistent with the evidence and the law, the
2 evidence you're about to hear and the law you'll be given by
3 the Judge, and that verdict is guilty. Thank you.

4 THE COURT: All right. Thank you.

5 OPENING STATEMENT

6 MR. IOVIENO: Yes, Judge thank you. Good morning,
7 ladies and gentlemen. You just heard a theory, the
8 government's theory of the case, and with any theory, there's
9 always two sides to a story.

09:51AM 10 My name is Thomas Iovieno, and I represent
11 Mr. Erick Argueta Larios. Mr. Larios is 33 years old. He's
12 from El Salvador. He has a family. He has three children.
13 His mother still lives in El Salvador. He has a son. He's a
14 father. He has a sister who lives in Massachusetts. He lives
15 and works in the community of Everett.

16 Mr. Larios worked for a company picking up trash,
17 Russell Disposal, and he also worked for a landscaping company,
18 and Mr. Larios is from El Salvador, and Mr. Larios came over
19 here when he was 13 years old, and when you are 13 years old
09:52AM 20 and you come from a foreign country and you don't speak
21 English, you have a tendency, and it's only normal, that you
22 hang around with people your own age from your own culture who
23 share your own interests, and that's what Mr. Larios did.

24 He's 13 years old. He speaks very little English, and
25 he finds himself on the streets of Everett and Chelsea, and he

1 hangs around with people his own age in this group, and this
2 group, the government called them Eastside, and I'm not going
3 to dispute that, there are a group of young men, this is like
4 in the year 2000, and they do things. They smoke marijuana,
5 they drink, they walk around as a group because they feel a
6 little bit more empowered acting as a group together, and they
7 get in fights.

8 They get in fist fights with other rivals, and they
9 protect their so-called neighborhoods, and that's what they did
09:53AM 10 as teenagers, and as time goes on, these men grow up, they have
11 families, they have children of their own, they own houses,
12 they work in the community.

13 And now in 2012, 2013, 2015, they're 30, 40 years old,
14 and they're established in our community, and they still hang
15 out together, they're still friendly. They drink, they smoke,
16 they go to bars, they get in fights, but these group of men,
17 and, in particular, Erick is preoccupied with living his life
18 with his children and his family.

19 You're going to hear that Erick is not around that
09:54AM 20 much during these so-called meetings, that, in fact, people are
21 wondering where Erick is. Erick is busy with his family, he's
22 busy working. Does he show up to some meetings? Sure, he
23 does. They hang around in the garage. The government calls
24 them meetings. They hang around, they smoke marijuana, they
25 play cards. They're older men.

1 So, is there MS-13 around in the United States?
2 Absolutely. Okay. And the government was concerned about
3 MS-13 around 2012, maybe a little bit earlier, they start
4 focusing because MS-13 is throughout the entire country. It's
5 around here in Massachusetts, but with these group of men, with
6 Erick, in particular, as he's gotten older, as he's aged and
7 taken care of his family and working in the community, they're
8 resisting all this outside pressure. They're resisting,
9 they're not joining, they're not following orders, they're not
09:55AM 10 following rules.

11 They're older, and they want to separate themselves
12 and disassociate themselves from what's going on, the violence
13 that they hear about, and you're going to hear a lot in this
14 case, a lot of talk about after the fact things.

15 For instance, you read in the newspaper and you hear
16 about something, you may talk about it at work or at school,
17 not unlike what these gentlemen did. They hear about things on
18 the street, and they talk about it. It's only normal to talk
19 about things, and that's what they did. They talked a lot
09:56AM 20 about things, but there's always a major problem around this
21 period of time is that these men from El Salvador, the
22 government paints everybody from El Salvador with a broad
23 brush, all these men from El Salvador must be MS-13.

24 But what they're doing is hanging out as a group,
25 talking about what's going on in their community, and part of

1 that is murders that occurred, part of that is stabbings, part
2 of that is violence on the streets, and they talk about it, but
3 what you're going to hear, it's all after the fact with these
4 gentlemen, and what is going on is they're trying to
5 disassociate themselves from the violence that they're hearing,
6 but there's a fine line in doing that.

7 In order to do that, you have to embellish a lot, you
8 have to exaggerate, you have to appear to be in the loop and
9 understand what's going on in the community, but what these men
09:57AM 10 didn't do and Mr. Larios didn't do was participate in it, okay.

11 Then in 2012 is a critical time because the
12 government, FBI, what they decide to do is to recruit some of
13 them to come up and infiltrate in Massachusetts MS-13, so they
14 find a guy. His name is Pelon, Cooperating Witness Number 1.
15 You'll hear that throughout this trial. Pelon is a convicted
16 drug dealer from Miami. He's deported back to El Salvador.
17 While he's back in El Salvador, the FBI recruits him, we need
18 you to come up and infiltrate MS-13 in Massachusetts.

19 So they give him an enormous amount of money, hundreds
09:58AM 20 of thousands of dollars in housing, hundreds of thousands of
21 dollars in immigration benefits for himself and his family
22 who's in El Salvador, and the government brings them here, too.
23 They set him up here, they give him a job, they buy him a car,
24 so Pelon comes up here, and he starts going into the
25 neighborhoods and trying to befriend people, certain people,

1 and there's other cliques that the government has talked about.
2 There's other cliques, the Everett clique, the East Boston
3 clique, Molinos, younger members that Pelon could not get
4 inside because they were just too young.

5 So what does he find? He finds these men who are
6 hanging around a garage smoking marijuana, and he gets in
7 because he gives them drugs, okay, and befriends them, okay,
8 but he's also got a problem because he's got all this money
9 coming in. His family is being supported, his family has been
09:59AM 10 delivered from El Salvador, he is living now in the
11 United States where he was deported from, okay.

12 But in 2012, he's talking with these men from
13 Eastside, and nothing is going on. There's no real violent
14 crimes being occurred, so Pelon decides with the help of the
15 FBI, I've got to turn the heat up here. We have to get these
16 men to do some things because this investigation started maybe
17 earlier than 2012, it went on for three or four years, so Pelon
18 goes out, and he goes to these other cliques, and he recruits
19 these other members, and you heard the reference to "Animal."

09:59AM 20 Animal is not a member of Eastside. He doesn't hang
21 around the garage. They don't even know him, and he goes out
22 with Animal, and he goes out with some other people, and they
23 participate along with the government informant in attempted
24 murders, in stabbings, in drug deals, in violent crimes, and
25 what you're going to hear is Pelon then comes back to the

1 garage during these meetings, and he's got a wire on, and he
2 has video on his hat, and he comes in because he wants these
3 men to talk about this stuff. He wants to bring this crime
4 that he's out there participating in, he's out there doing this
5 stuff, too, okay.

6 And he participates in armed robberies of restaurant
7 delivery people during the investigation, and he brings that
8 back to these men in Eastside, and he talks about it, and
9 you're going to hear him talk about it, okay.

10:00AM 10 And over and over and over again in this case, the
11 common denominator that brings this crime back to these
12 gentlemen, these men in the garage smoking marijuana, getting
13 in some bar fights, is CW-1, Pelon, he's the one bringing it
14 all back because he's motivated, my whole family is here, my
15 ticket to freedom in the United States is I have to produce,
16 and he wasn't producing, so he went out and he created the
17 crimes. He went out with the other members to the other
18 cliques and did things.

19 Then you're going to hear in this case, you're going
10:01AM 20 to hear from the government calls them cooperating witnesses,
21 other individuals, CW-7, who's a gentlemen called Tigre, CW-11
22 who is a gentlemen Muerto, and CW-2, who is someone called
23 Clacker. Those are their names.

24 When you hear from them, consider their motivations
25 when they testify because these gentlemen were also given money

1 by the government, housing, and, most importantly, protection
2 and immigration benefits. They don't have to go back to
3 El Salvador, they get to stay here, so consider when you hear
4 their testimony, and the government calls them confidential
5 witnesses and confidential informants, but there's another word
6 for them. They're called rats, okay, and rats will say
7 whatever they want to say because they're getting benefits, so
8 consider what they say when you hear this case.

9 This is a case that's built on the backs of rats,
10:02AM 10 okay, and these are people who have infiltrated CW-1, where
11 these men hang out and got them to talk about things, and talk
12 in and of itself is not a crime, and you have to ask yourself
13 when you hear the evidence in this case, ask yourself with
14 respect to Mr. Larios, ask yourself what did he actually do?
15 Okay. What did Mr. Larios actually commit, and did he actually
16 do any crimes in this case?

17 Then ask yourselves what did he know about fully,
18 fully know about prior to the acts the government is going to
19 talk to you and present evidence about? What did Erick fully
10:03AM 20 know, not partially know, what did he fully know?

21 Then the other thing you are going to ask yourself
22 that will lead to the ultimate verdict in this case of not
23 guilty is what did he agree others would do? And ask yourself
24 those three simple questions and think about those as the
25 evidence comes in.

1 At the end of this case, I'll have an opportunity to
2 address you again and address you and argue from the evidence
3 that comes in, and at the end of this case, I believe they'll
4 be no other conclusion that Mr. Larios is not guilty of these
5 crimes. So I thank you in advance for your attention and your
6 service. Thank you.

7 THE COURT: Thank you. Mr. Murphy.

8 MR. MURPHY: Thank you, your Honor.

9 OPENING STATEMENT

10:04AM 10 MR. MURPHY: Good morning. My name is Marty Murphy.
11 It's my privilege to represent Herzzon Sandoval, who's standing
12 here with my colleague Madeleine Rodriguez.

13 Let me start by putting up a list. It's a list of 10
14 crimes. We'll get it in focus here. Trafficking in narcotics,
15 murder, assault with intent to murder, attempt to murder, armed
16 assault with intent to murder, conspiracy to commit murder,
17 armed robbery, armed assault with intent to rob, attempted
18 robbery, and conspiracy to rob, 10 crimes.

19 Why have I mentioned 10 crimes? As you heard from
10:05AM 20 Judge Saylor, Mr. Sandoval is charged in this indictment with
21 only a single crime, but it's a complicated crime, the crime of
22 conspiracy to commit racketeering. He's accused of agreeing to
23 participate in the conduct of the affairs of an enterprise
24 through a pattern of racketeering acts. That's a mouthful.

25 I want to focus this morning on the last part, the

1 last five words in that definition, a pattern of racketeering
2 acts because, as you heard from the Judge, a pattern requires
3 proof of these crimes.

4 Those are the crimes that are charged in the
5 indictment, crimes related to drug trafficking, crimes relating
6 to murder and attempted murder, crimes relating to robbery and
7 attempted robbery, and I respectfully suggest that when the
8 PowerPoint slides are over and the dust settles and you have an
9 opportunity to hear the evidence from live witnesses subject to
10:06AM 10 cross-examination, what you will see is that there is no
11 credible, believable evidence that Mr. Sandoval personally
12 committed in any of those crimes, drug trafficking, attempted
13 murder, robbery or attempted robbery, that there is no
14 credible, believable evidence after the dust settles, after the
15 cross-examination is done that Mr. Sandoval agreed to commit
16 any of those crimes and that there will be no credible,
17 believable evidence after the dust settles, after the
18 cross-examination is done that Mr. Sandoval agreed to
19 participate in a conspiracy, an agreement, where those crimes
10:07AM 20 would be committed.

21 In fact, the evidence will show quite the opposite.
22 The evidence will show that in 2015 because Mr. Sandoval was
23 not with the program of MS-13 led by East Coast individuals in
24 Virginia and by others in El Salvador, those leaders said they
25 had enough, he wasn't doing what they wanted him to do, and so

1 they decided that he needed to be killed, to be killed.

2 You'll hear that the FBI thought that threat was quite
3 credible enough that on September 3rd, 2015, they went to
4 Mr. Sandoval and told him, "MS-13 wants to kill you." Why?
5 The evidence will show because he did not agree to commit the
6 kind of acts that MS-13's leadership in El Salvador wanted him
7 to commit.

8 You will hear that even after he was warned, even
9 after the FBI explained what they thought would happen to him,
10:08AM 10 he persisted in refusing to commit the kinds of crimes on the
11 list that I read earlier.

12 And, again, in December, 2015, the leaders in
13 El Salvador had had enough with this do nothing group, and,
14 again, the evidence will show they ordered that he be killed.

15 You will hear that there were some things that
16 Mr. Sandoval did agree to do, and there's some things you're
17 not going to like, I'll tell you that in advance.

18 You'll hear, for example, that Mr. Sandoval agreed to
19 help raise money to bring his fellow countrymen from
10:09AM 20 El Salvador into the country illegally. We concede that.

21 There's no doubt about that at all, but it's not one of the
22 crimes on the list of 10 crimes charged in the indictment, and
23 when the dust settles, I respectfully suggest that there will
24 be no evidence that Mr. Sandoval committed any of those crimes
25 personally, agreed to commit any of those crimes or entered

1 into an agreement or a conspiracy that those crimes would be
2 committed.

3 Now, you will in the course of this case have an
4 opportunity to compare and contrast what the evidence shows
5 about what Mr. Sandoval did and agreed to do with what the
6 evidence showed that others agreed to do and did do, and that
7 will give you a case study in what the difference is between
8 someone who does not agree to enter into a conspiracy to commit
9 those 10 crimes and what someone, what the evidence looks like
10:10AM 10 when someone does.

11 The individuals that you see to agree to commit those
12 crimes, Mr. Iovieno mentioned some of them. Let me put this
13 next list up. We'll start with the man Mr. Iovieno began
14 talking about.

15 You know, sometimes the evidence that speaks the
16 loudest is the evidence that people don't mention, and the
17 government didn't say very much about CW-1, Pelon, or as the
18 government agents called him Mako during the course of opening
19 statement, and what you will hear about CW-1, Mr. Iovieno
10:11AM 20 mentioned some of this, in 2012, Pelon was living in
21 El Salvador.

22 He was there because he had been here in the
23 United States and had been convicted of drug trafficking and
24 been sentenced to a 10-year sentence and was deported back to
25 El Salvador, but you'll learn that the FBI was not content to

1 leave him there. Instead, they went to El Salvador and brought
2 him back to Boston.

3 In 2013, 2014, 2015, 2016, they paid him benefits
4 amounting to \$200,000. They set him up with housing, they gave
5 him a car, they helped him get a driver's license, and his job,
6 his job was to try to collect evidence against MS-13 in Boston,
7 East Boston, Chelsea, Revere, but there was a catch.

8 You'll hear that in order to get those benefits, Pelon
9 promised, and this is something the government didn't tell you
10:12AM 10 about, he promised that he would not commit any crimes. That's
11 the deal, we set you up, you collect evidence, but you can't
12 commit any crimes without specific authorization from the FBI.

13 You will see what happened here, and when you see
14 that, you will see what it looks like for there to be hard
15 evidence of conspiracy to commit murder and conspiracy to rob.

16 Let me start with conspiracy to rob, and you're going
17 to hear in this case about a second individual, Clacker.
18 Clacker, you'll hear, is a young man from Chelsea.

19 Pelon, the government's informant, working for the FBI
10:13AM 20 pulled the wool over the FBI's eyes completely. The evidence
21 will show they dropped their ball. They had their head in the
22 sand, and so while he was supported by the FBI, he recruits
23 Clacker and other young men to go out and rob cab drivers in
24 East Boston, Chelsea, Everett.

25 You'll hear that in the winter of 2014 and 2015, Pelon

1 and Clacker and other young men, not Mr. Sandoval or any of
2 these men here, robbed somewhere between 30 and 40 cab drivers.
3 This is the guy that's working for the FBI.

4 The average take, a good night, \$1800 plus they would
5 steal the driver's cell phone and sell them and split the
6 money. The FBI was asleep at the switch, the evidence will
7 show, and when you look at what Pelon did with Clacker, you'll
8 see what real evidence looks like of a conspiracy to commit
9 armed robbery. These were robberies committed at knifepoint,
10:14AM 10 and you're going to hear at least one of them, one of the cab
11 drivers was stabbed.

12 If you want to see evidence of what conspiracy to
13 commit attempted murder is, one of the crimes on those 10
14 lists, you're going to hear about events that took place on
15 May 27th, 2015, again, none of these defendants and certainly
16 not Mr. Sandoval were anywhere near what happened on May 27th,
17 2015.

18 But you'll hear that there was a call, that there were
19 some members of a gang called 18th Street hanging around in
10:15AM 20 Highland Park in Chelsea, and the call to another one of the
21 men on the government's witness list, Muerto.

22 Muerto was with Pelon, the FBI's guy, the cooperating
23 witness. Muerto said, "I don't know a lot of people over
24 there, I'm not sure that's a good idea." Pelon, the
25 government's man says, "No, we're going." He calls someone to

1 get a knife, and together three men, none of these defendants,
2 go to Highland Park in Chelsea, and you'll hear what happened
3 next.

4 Pelon, the government's man, knocks down an individual
5 named Minor Ochoa, Muerto stabs him, perhaps even while Pelon
6 is holding him down. That's what evidence of a conspiracy to
7 attempt murder looks like, and it won't be evidence you hear
8 about Mr. Sandoval or these defendants, it will be evidence
9 about what the FBI's own agent did with the other individuals
10:17AM 10 who are going to be cooperating with the government in this
11 trial.

12 Then there's Animal, Joel Martinez. You heard the
13 government talk about Animal, and, again, sometimes the
14 evidence that speaks the loudest is the evidence that someone
15 doesn't tell you about.

16 You will hear that on September 30th, 2015,
17 Joel Martinez did commit a homicide. I think we may hear about
18 that later today. What the government didn't tell you is that
19 in early October, less than two weeks after he committed that
10:17AM 20 crime, he told Pelon, the government's informant about it.

21 It's on videotape, and on October 22nd, 2015, less
22 than two weeks after the murder of Mr. De Paz, the victim in
23 that homicide, the FBI knew that Mr. Martinez was a dangerous
24 killer.

25 Did the FBI say, "Okay, let's arrest him?" No, they

1 kept him on the street, and you will hear that even though the
2 FBI and Pelon knew where he was, they let him walk around, and
3 so you will see that on December 27, 2015, when Animal is out
4 walking around with another one of the government's witnesses,
5 CW-7, Tigre, they find a rival gang member, Animal, the man the
6 FBI has let walk around, stabs him, and Tigre helps.

7 That's what a conspiracy to commit murder looks like,
8 and it's not these men, it's not Mr. Sandoval, who are
9 responsible, it was Pelon, it was Joel Martinez, it was Muerto,
10:19AM 10 it was Tigre.

11 What the evidence in this case in the end will show is
12 that Mr. Sandoval did not agree to commit any of the crimes on
13 that list of 10, and he did not enter into a conspiracy, an
14 agreement that any of those crimes would be committed. You'll
15 see the individuals who are guilty of those crimes.

16 You'll have an opportunity to evaluate their testimony
17 when they make accusations against other people, and you'll see
18 that what happened here is the FBI brought a man back from
19 El Salvador, they paid him \$200,000 in benefits during the
10:20AM 20 three years that he was working for them. After, after they
21 found out that he had committed these robberies, did they say
22 we made a deal, you didn't keep your part, we're prosecuting
23 you for those armed robberies? No, they kept him on the
24 street.

25 And, in fact, you'll hear that in 2017 alone, the FBI

1 and the government spent \$300,000 in addition to the 200,000
2 they had already spent to relocate him and 18 family members,
3 18 of his family members that they brought from El Salvador.

4 CW-1, Pelon is the great instigator in this case. He
5 is the central figure in this case, and when you hear the
6 evidence, I'll ask you to focus on his actions, and I'll ask
7 you to bear in mind the central question from Mr. Sandoval's
8 perspective that I'd ask you to focus on, where is the evidence
9 that he participated in any of these crimes? Where is the
10:21AM 10 evidence that he agreed to participate in any of these crimes,
11 and where is the evidence that he agreed to join a conspiracy
12 where these crimes would be committed? I suggest to you that
13 in the end, I'll be able to return to you and ask you to render
14 a verdict of not guilty. Thank you very much.

15 THE COURT: All right. Thank you. Let's do one more,
16 and then we'll take our break. Mr. Lopez.

17 OPENING STATEMENT

18 MR. LOPEZ: May it please the Court, ladies and
19 gentlemen of the jury, this is Edwin Guzman. In the eyes of
10:22AM 20 the law, Mr. Guzman is presumed innocent because he is
21 innocent.

22 I saw the looks on your faces when you heard the words
23 "RICO conspiracy," and it's true that Mr. Guzman is accused of
24 conspiring to commit racketeering acts. Specifically the
25 indictment alleges that each defendant agreed that a

1 conspirator would commit at least two racketeering activities.

2 What the Court has told you that Mr. Guzman is
3 presumed innocent of this single charge, and the evidence will
4 show that Mr. Guzman is innocent of this single charge. The
5 evidence will show that Mr. Guzman never agreed to commit any
6 racketeering act. The evidence will show that Mr. Guzman never
7 agreed with anyone else that they would commit racketeering
8 acts. The evidence will show that Mr. Guzman is innocent of
9 the charge in the indictment.

10:24AM 10 Now, we've all heard the maxim, "Actions speak louder
11 than words." This general truth means that what you do is more
12 important than what you say because the things you do show your
13 true intentions, and that's what this trial is all about,
14 ladies and gentlemen, a search for the truth, a search for
15 Mr. Guzman's true intentions.

16 As you listen to the evidence in this case, I ask you
17 to keep an open mind until you've heard all of the evidence in
18 this case. I ask you to pay particular attention to the
19 evidence that concerns Mr. Guzman.

10:24AM 20 Mr. Guzman is tried here as an individual. Your job
21 is to find the truth as it relates to him. You will hear a lot
22 of evidence in this case about what other people did and what
23 other people said. Mr. Guzman is not responsible for anything
24 that anyone else did or anything else someone said unless the
25 government convinces you beyond a reasonable doubt that he

1 agreed to be a member of the conspiracy.

2 As you listen to the evidence, I want you to pay
3 particular attention to what Mr. Guzman does. Now, I'm not
4 asking you to ignore what he says, rather, I'm suggesting to
5 you that to find the truth in this case, you need to focus on
6 what he does.

7 What he does will give you a window into his state of
8 mind. For example, you'll hear that he refused to go on those
9 drug protection details. You'll hear that he refused to buy
10:25AM 10 illegal guns. You'll hear that he refused to go out looking
11 for rival gang members, and the evidence will show that
12 Mr. Guzman resisted Pelon's pressure.

13 Now, who is Mr. Guzman? Mr. Guzman is an American
14 citizen. He's a good son. He's a good husband. In May of
15 2015, he married Evelyn Torres. In 2006, he became a father
16 for the first time. In 2013, he became a father for the second
17 time. He has two girls, age 12 and 4, and his family is here
18 today. Could you please stand up. That's his wife Evelyn and
19 his daughter.

10:26AM 20 Now, Mr. Guzman is a good family man. He's hard
21 working. He has a great work ethic. In fact, in 2015, he made
22 over \$70,000 driving a commercial vehicle. He owns two homes
23 in Revere. In one home, he lives with his mother, his children
24 and his wife. The second home he owns, he rents out.

25 Prior to the indictment in this case, Mr. Guzman was

1 building a wonderful American life. He was living the American
2 dream. In this case, the government has alleged that
3 Mr. Guzman agreed to be a member of this conspiracy.

4 Well, what is a conspiracy? A conspiracy is an
5 agreement, an agreement to do something illegal. But what is
6 an agreement? Boiled down to its essence, an agreement is a
7 promise, a promise to do something.

8 For example, if I promise with you to commit a bank
9 robbery, I've entered into a conspiracy with you, but what is a
10:27AM 10 promise? A promise is a communication. It can be verbal or it
11 can be in writing, but the communication should be clear and
12 unambiguous. The words that are used when we make a promise
13 are very important. A promise also tells us about our
14 intentions. Well, what's intent? Intent is a state of mind
15 that represents a commitment to do something, and when we say
16 that when someone does something to achieve a particular goal,
17 his behavior was intentional.

18 So, what intentions are communicated when someone
19 makes a promise? The words we use in a promise communicate two
10:28AM 20 intentions. First, the speaker communicates an obligation to
21 do something in the future, assuming he's telling the truth,
22 and, second, the speaker communicates to the listener that he
23 is placing himself under an obligation to do something in the
24 future.

25 Now, with these concepts in mind, what will the

1 evidence show in this case? Well, first off, you will not hear
2 a single shred of evidence, of direct evidence, that Mr. Guzman
3 agreed to do any racketeering acts.

4 Let me repeat that. You will not hear any direct
5 evidence that Mr. Guzman agreed to do any racketeering acts.
6 In other words, the government's not going to put a witness up
7 on the stand who's going to say on a certain date, I sat down
8 with Mr. Guzman, and we agreed together that we were going to
9 go out and commit racketeering acts. You're not going to hear
10 any of that.

10:29AM

11 In fact, you will not hear any evidence that
12 Mr. Guzman promised to commit murder or attempted murder or
13 armed assault or any other racketeering act, and Mr. Guzman is
14 not charged in the conspiracy to traffic in drugs.

15 So what will you hear? You will hear that the
16 government manufactured a sting operation to gather
17 incriminating evidence on Mr. Guzman. Well, how did they do
18 that? Well, Mr. Murphy has already gone into great detail
19 about that, so I won't repeat that and waste our time, but who
20 is Pelon?

10:30AM

21 Everyone is familiar with the story of original sin in
22 the bible. That's the one where Adam and Eve are in the garden
23 of Eve, and God says to Adam and Eve they can eat from any tree
24 in the garden except for one, and then a serpent comes along
25 and tricks Eve into eating from the forbidden tree, eating the

1 forbidden fruit, and then she shares them with Adam, and
2 together they both disobey God's law.

3 Well, ladies and gentlemen, Mr. Pelon, CW-1, is a
4 serpent in this case. Over a period of two years, CW-1 tried
5 to get Mr. Guzman to commit racketeering acts. He tried to
6 pressure him into committing racketeering acts. For two years,
7 Mr. Guzman resisted Pelon's lies and pressure.

8 Now, you've already heard from the government that
9 CW-7, Mauricio Sanchez and CW-7, Jose Hernandez-Miguel, were
10:31AM 10 not so strong, they gave into CW-1's lies, they gave into his
11 pressure. They committed some of the racketeering acts alleged
12 in this indictment and, you know, that they say a leopard can't
13 change his stripes, neither could Pelon, and, again, Mr. Murphy
14 has gone into the different acts and crimes that he committed
15 while he was working for the government, while he had promised
16 the government that he would not be committing criminal acts.

17 And even when he wasn't prosecuted for these
18 robberies, he was put into the witness protection program and
19 everyone then he couldn't resist a life of crime. He violated
10:31AM 20 the terms of the witness protection program and was kicked out.

21 Now, the government will ask you to you focus on what
22 other people did and said. The government will present
23 evidence that other people, people other than Mr. Guzman
24 committed racketeering acts, but keep in mind that what other
25 people did and said was in response to Pelon's lies and also

1 keep in mind the Court's instruction that associating with bad
2 people is not a crime.

3 Now, you'll also hear some evidence that Mr. Guzman
4 has a tattoo that says MS-13, but the government will not
5 present you with any evidence about this tattoo. You will not
6 hear the circumstances under which he received this tattoo.

7 Most importantly, you will not hear any evidence from
8 the government about what promises, if any, Mr. Guzman made
9 when he got this tattoo. The context is important, ladies and
10 gentlemen. Why Mr. Guzman has a tattoo is important, and it's
11 the government's burden, not Mr. Guzman's, to explain why he
12 has a tattoo.

13 As you listen to the evidence in this case, ask
14 yourself what did Mr. Guzman know and when did he know it?
15 When did Mr. Guzman learn that others had committed
16 racketeering acts? Also, listen to the evidence and please
17 focus on the evidence as it relates to Mr. Guzman. In short,
18 listen to the evidence and ask yourself what promises did
19 Mr. Guzman actually make? What did he know, when did he know
20 it, and, most importantly, what did he actually do?

21 At the conclusion of this trial, I'm going to ask you
22 to save Mr. Guzman from the single charge against him by
23 finding facts and applying the law, by upholding the most
24 fundamental constitutional protection we have, the presumption
25 of innocence, which you have taken an oath to do. This is the

1 great calling of an American jury, to find the truth, to speak
2 the truth, to do justice, to find an innocent man not guilty.

3 THE COURT: All right. Thank you, Mr. Lopez. Ladies
4 and gentlemen, we're going to take a break. Again, my plan
5 every day is to take two breaks. The shorter the breaks, the
6 faster this trial will go. I know there's 16 of you. We have
7 to get you up the stairs and in and out of whatever facilities
8 you need to use, but I'll ask you let's make this as quick and
9 efficient as we can to keep the trial moving every day, so we
10 will take a break.

10:34AM

11 THE CLERK: All rise.

12 (A recess was taken.)

13 THE CLERK: All rise.

14 THE COURT: I already have a note from a juror. It's
15 from JH. I forget who she is but, the note reads as follows:
16 "One of the defendants, Erick Argueta, works for the Russell
17 Disposal Company that comes to my house. I'm always walking at
18 the time of removal. JH, Wilmington." She is the juror in
19 seat 11, 54.

10:47AM

20 What I would propose to do is call her to sidebar. I
21 obviously don't want to say that the defendant is detained but
22 simply say he is not working for the Russell Disposal Company.

23 MR. IOVIENO: That's fine, your Honor.

24 THE COURT: Does anyone have a different idea?

25 MR. MURPHY: I think there are three of us who

1 represent individuals who work for Russell Disposal.

2 THE COURT: Well, she asked about Argueta, I'll answer
3 that question.

4 MR. IOVIENO: Yes.

5 THE COURT: I'll mark her note as Exhibit A.

6 (Exhibit A marked for identification.)

7 THE CLERK: All rise.

8 (JURORS ENTERED THE COURTROOM.)

9 THE COURT: Ms. H, can I see you quickly at sidebar.

10:51AM 10 (THE FOLLOWING OCCURRED AT SIDEBAR:)

11 THE COURT: You had passed me a note asking or
12 indicating that Defendant Argueta worked for Russell Disposal
13 Company. He is not now working for the disposal company. I'm
14 inferring if you wondered that you might see him or something.

15 THE JUROR: Or may have.

16 THE COURT: Or may have in the past, which I don't
17 think is an issue either, but, suffice to say, he is not now
18 working for the company.

19 THE JUROR: I just wanted to make sure. I knew from
10:51AM 20 prior.

21 THE COURT: Okay. Thank you.

22 - - - -

23 THE COURT: Do you need a ruling?

24 MR. POHL: Sure. I had a more practical question.

25 Can you tell the jurors that the screens pop up. We didn't do

1 that. I don't think we would want it for the stuff coming up,
2 if you have a ruling.

3 THE COURT: My ruling is going to be I think the
4 picture of his face is not particularly relevant to anything,
5 unless there's an identification issue, so that's point 1. So
6 the stab wounds I'm going to allow in. It seems to me that in
7 this context, anyway, they're not unduly inflammatory even
8 though these defendants are not excused of a particular murder,
9 and I don't want the information unduly sanitized either at the
10:52AM 10 other extreme, so I think they should not be excluded under
11 Rule 403 but I will exclude it under 101.1.

12 MR. POHL: Are you going to give a limiting
13 instruction that they are not alleging that any of these four
14 individuals participated?

15 THE COURT: That's way too complicated to do, so I'm
16 not going to give that instruction.

17 MR. POHL: Thank you, your Honor.

18 (SIDEBAR CONFERENCE WAS CONCLUDED.)

19 THE COURT: Ladies and gentlemen, before I forget,
10:53AM 20 those of you in the back row also have screens. They pop up in
21 between you. One thing you all should know is sometimes one of
22 these screens or all of them will go blank for no reason. You
23 know, it's government equipment, so just raise your hand, we'll
24 try to deal with it. If necessary, we can move you around.

25 All right. Mr. Norkunas.

1

2

5

9

22

25

1 particular case, you're going to hear about ESLS was meeting
2 after or starting approximately in 2014 in a garage in Everett.
3 Prior to that date, I believe the evidence is going to show you
4 they had met at several different locations. They moved over,
5 a group of young men from El Salvador, decided that was an
6 appropriate place to do so. He was still running or part of a
7 mechanical business that's in there.

8 One of the videos you're going to see and a witness
9 from here that will show you meeting of a group of young men
10:56AM 10 within there. It's clearly identifiable as a functional and
11 working garage, tires for sale on one side, schedules you'll be
12 able to see when someone is having a discussion with someone
13 else, one of the big tool chests, the red chests, they're
14 moving it out of the way. There's even a discussion at some
15 point in time prior to Animal coming in there, is this an
16 appropriate person that should be in there?

17 Now, there's a dispute as to -- there may be a dispute
18 as to who actually makes the statement, but CW-1, Mr. Pelon, is
19 telling the group we've had a problem here because Mr. Martinez
10:56AM 20 doesn't want us to bring this type of person into our shop
21 because it's going to affect his business, it's going to close
22 him down, he's going to go out of business itself, and,
23 further, you'll understand from what Pelon said, he had been
24 having that discussion for a couple days with Mr. Martinez
25 about being able to come into that shop under those

1 circumstances and further says Mr. Martinez has been having a
2 problem with us bringing us in these young kids who are wild
3 and doing crimes.

4 This is the type of individuals that Mr. Martinez is.
5 You're also going to find out, he can stand up today, but I'm
6 not going to have him do that, he has no tattoos, and, again,
7 he's five foot four. His physical stature is not substantial.

8 The evidence the government will ask you to believe in
9 this particular case is basically audio recordings, and you're
10:57AM 10 going to hear they were very difficult to translate. They're
11 all in Spanish, and, again, any group of individuals, whether
12 they be male, female, old, young, you put them in an enclosed
13 environment, and everybody starts talking.

14 There's conversation from here, from here, from here.
15 You're going to hear it's the government trying to come up with
16 a package, a transcription of this. It was an evolution
17 because, as you would expect, young men, limited education
18 coming up from a foreign country, they're going to have a
19 particular dialect.

10:58AM 20 If we're all from Massachusetts, we go down to
21 Georgia, we go down to North Carolina, they're going to say,
22 oh, you speak funny, you're different. Every place has a
23 little bit of slang, a little bit of difference. You send
24 those out to a linguist in San Diego or Tampa, Florida, they're
25 going to have some difficulties, some problems, but, more

1 importantly, is going to be how the identifications come about
2 of my client and what maybe they're saying is attributable to
3 him.

4 Part of that is going to be is he on any of the videos
5 that you're going to see? If a person is not on the video, and
6 there's this multiplicity of voices, who's identifying that
7 voice and saying, particularly if it's a short phrase, oh, I
8 know who that was.

9 One of the issues that will rise in that is once the
10:59AM 10 government says, oh, we can identify someone in this particular
11 case, you'll hear my client had a nickname, Cheche. As the
12 transcriptions evolve, that isn't the name that is being
13 attributed to him, it's a different name, Checha, and I'm going
14 to submit to you I expect you're going to hear there's a
15 different Spanish pronunciation when you put an A on the end of
16 the name versus an E on the end of the name, and if you're not
17 seeing the person that's doing it and say, oh, I think it's
18 so-and-so but it's a different abbreviation or a different
19 nickname within the group of young men that got together and
10:59AM 20 there were different individuals at different times, a number
21 of them had similar sounding nicknames.

22 So the question is going to become how is it that you
23 attribute that to this person and want him to be held
24 accountable for that? As Mr. Lopez had said a few minutes ago,
25 the issue is your actions, not your words. And what you're

1 going to see in this particular case is there are not those
2 actions of Mr. Martinez.

3 Now, Mr. Martinez is one of two individuals that's
4 charged separately with a drug conspiracy here, and, again,
5 this is going to be a situation where there's going to be audio
6 but not audio that anybody can say that's Mr. Martinez.

7 A car is going north is what you're going to hear, and
8 in that is Mr. Pelon and Muerto in that car. Pelon is a
9 cooperating witness at that time. They set up a sting with the
11:00AM 10 FBI, again, more of a television performance perhaps knowing a
11 jury would see it at some time than any type of reality to it.

12 They're telling what they say is Mr. Martinez, we're
13 going to have you follow behind us, and if police try to stop
14 us, perhaps you'll start to speed up, and the police would be
15 more likely to go for you than they necessarily would go for
16 us, whatever sense that makes, but in the context of that then,
17 you'll hear they put up this elaborate pretext that they're
18 going to have a SWAT team available, they're going to go out
19 and get actual drugs, and they're going to put them in the car
11:01AM 20 with the two people who aren't even going to look at the drugs
21 and deliver them to someone that they know is an uncover State
22 Police officer itself, that the charge against Mr. Martinez is
23 not that he is in a conspiracy with those two people in the
24 car, one is Pelon who's a government agent, Mr. Muerto becomes
25 a government agent.

1 They say he's not in that conspiracy with them, he's
2 in the conspiracy with the others where they run some other
3 scam and sting in October and December of 2014, however, what
4 you're going to hear is no connection ever arises from
5 Mr. Martinez to whatever allegations they've made about
6 whomever may be involved or not involved in October, in
7 December, and, more importantly, the two people in the car are
8 upset with what they say is Mr. Martinez, and they say we're
9 never using him again, he's out.

11:02AM 10 But yet the government says he somehow is involved in
11 what takes place later on. It will be your responsibility to
12 determine whether he is or he isn't. I would submit to you
13 there will be no evidence that he is involved in the charged
14 conspiracy that the government is presenting to you.

15 And I think when you listen to the evidence, what's
16 important to that is they don't have anything for a
17 racketeering aspect for Mr. Martinez. Again, the group is
18 meeting in his garage. He's still working. You'll hear he
19 also starts up a tow business, and he has a fancy tow truck
11:03AM 20 that he has. Besides the mechanical work is the tow work, but
21 they don't have any other aspect to put him into this
22 conspiracy which Mr. Murphy had so clearly defined for you what
23 it takes to have.

24 So now the FBI comes up with we've got to have some
25 sort of drug activity because that's the predicate, let's set

1 thi up with Mr. Martinez and see if we can get him to
2 participate or not participate.

3 The other aspect of that is when they're having a
4 discussion with what they say is Mr. Martinez, they say, All
5 right, we're going to go whatever the date is. He shows up at
6 a rental car with a buddy, and Mr. Pelon and Mr. Muerto are
7 very upset because this is supposed to be serious, we're
8 setting you up, it's a drug sting.

9 He obviously shows up because it's going to be a ride
11:04AM 10 from Massachusetts to New Hampshire, and he's got his buddies,
11 and they're just going to enjoy themselves, not treating it as
12 the issue that Pelon and the setup of the sting would like to
13 occur.

14 Ladies and gentlemen, when this trial is over, I will
15 have the opportunity to come back here in front of you, address
16 the evidence to you and argue to you why conclusively in this
17 case there will be proof beyond a reasonable doubt, and that
18 will be that my client is not guilty of the charges that the
19 government has brought against him in this matter. Thank you.

11:04AM 20 THE COURT: All right. Thank you, Mr. Norkunas.

21 All right. Is the government ready to call its first
22 witness.

23 MR. POHL: Yes, your Honor. We call Richard Daley.

24 RICHARD DALEY, having been duly sworn by the Clerk,
25 testified as follows:

1 MR. POHL: Your Honor, before I begin my direct
2 examination, the parties have a stipulation concerning the
3 admissibility of Exhibit Number 91, which is a 9-1-1 tape.

4 THE COURT: All right. Ladies and gentlemen, a
5 stipulation is kind of a fancy lawyer word for an agreement.
6 It means the parties have agreed that something is true. In
7 this case, I think it's that this 9-1-1 tape is authentic.

8 MR. POHL: Yes. Your Honor, I'd offer Exhibit 91, and
9 I'd ask permission to play it.

11:06AM 10 MR. MURPHY: Your Honor, may we have an objection for
11 relevance?

12 THE COURT: Yes, overruled.

13 (Video played.)

14 (Exhibit No. 91 received into evidence.)

15 RICHARD DALEY, having been duly sworn by the Clerk,
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. POHL:

19 Q. Good morning.

11:10AM 20 A. Good morning.

21 Q. Can you please introduce yourself to the ladies and
22 gentlemen of the jury.

23 A. My name is Richard Daley, D-a-l-e-y. I'm a sergeant
24 detective with the Boston Police Homicide Unit.

25 Q. Sergeant Daley, how long have you been a police officer?

1 A. Thirty-four years.

2 Q. How long have you been on the homicide unit?

3 A. Thirteen years.

4 Q. And your rank, Sergeant Detective, am I correct that that
5 means that you investigate homicides and supervise a team of
6 detectives that work for you?

7 A. Yes.

8 Q. Can you tell the jury about that.

9 A. Yes. I'm one squad of a night squads. I work 3 p.m.

11:11AM 10 to -- excuse me, 5 p.m. to 3 a.m. Twice a week we're on call
11 for those hours. It's myself. I supervise three other
12 detectives, and relative to this incident, it was myself,
13 Detective John Callahan, Detective David O'Sullivan and
14 Detective Todd Harron. We respond to any callouts of death
15 investigations, people that have serious injuries that could
16 lead to death, motor vehicle fatalities, sometimes sudden
17 deaths, if the person's identification is unknown, and any
18 investigation that the Suffolk County D.A., any death
19 investigation that the Suffolk D.A.'s office wants us to
11:12AM 20 investigate.

21 Q. Thank you. Given the schedule you mentioned suggests an
22 answer. How do you and your squad get assigned to particular
23 cases to investigate?

24 A. Like I sort of previously described, our first two nights
25 we're on call, and any of those incidents we get called out to,

1 usually the sergeant on the street at an incident will call the
2 operations division, and operations division will notify us,
3 and we'll gear up and go to the scene and deal with the
4 situation.

5 Q. Sergeant, do you recall whether you were working on
6 Sunday, September 20th, 2015?

7 A. Yes, I was.

8 Q. And I direct your attention to late in the afternoon on
9 that particular day. Did you receive a call to go somewhere?

11:13AM 10 A. Yes, at approximately 5:35 p.m., Operations notified
11 Homicide, that is my squad and I, to respond to 72 Trenton
12 Street in East Boston for a person stabbed.

13 Q. You've been doing this for many years. You might be
14 familiar with all the neighborhoods of the City of Boston. Can
15 you tell the ladies and gentlemen of the jury what 72 Trenton
16 Street looks like, what kind of neighborhood is it?

17 A. It's a densely populated residential neighborhood,
18 traditional three-story, two and a half story residential homes
19 with some neighboring stores and commercial businesses in the
11:13AM 20 area but mainly residential.

21 THE COURT: East Boston?

22 THE WITNESS: East Boston, yes.

23 Q. When you got that call, Sergeant Detective Daley, what did
24 you and your squad do?

25 A. I directed Detective Callahan to go to the Mass. General

1 Hospital to check on the condition and identity of the victim
2 and myself, Detective Halloran and Detective Sullivan responded
3 to 72 Trenton Street.

4 Q. Detective Callahan went to the hospital, correct?

5 A. Correct.

6 Q. And through that learned the identity of an individual who
7 had been transported there, correct?

8 A. Yes.

9 Q. And who was that?

11:14AM 10 A. Irvin De Paz.

11 Q. You went to the scene?

12 A. Yes.

13 Q. Of 72 Trenton Street. When you got to 72 Trenton Street,
14 what did you see?

15 A. An area cordoned off with yellow crime scene tape.
16 Uniformed police officers, well, the detectives on the scene,
17 the street is a one-way street, so they were able to block off
18 the whole street. Officers were protecting an area that had
19 some evidence in the street, and I was briefed by the sergeant
11:14AM 20 on the scene what they had.

21 Q. Okay. Is it standard practice for the Boston Police
22 Department to photograph crime scenes, particularly scenes
23 involving serious events like homicides?

24 A. Yes.

25 Q. Are you aware through the course of your duties as a

1 Boston police officer whether there were photographs taken of
2 the crime scene in this case?

3 A. There were.

4 Q. And you've had an opportunity to review those prior to
5 your testimony here today; is that correct?

6 A. Yes, I have.

7 MR. POHL: Can you pull up 93 for the witness.

8 Q. I will just quickly click through these, Sergeant
9 Detective Daley. Do you have a screen in front of you? Is it
10 working?

11:15AM

11 Sergeant, can you see it now?

12 A. I have the photo in front of me now, yes.

13 Q. I think there's a series of pictures. Why don't I quickly
14 click through them. Do you recognize this scene?

15 A. Yes.

16 Q. How do you recognize these?

17 A. That's the scene at 72 Trenton Street where Irvin De Paz
18 was killed.

19 Q. Okay. Do these photographs fairly and accurately capture
20 how the scene looked when you arrived late in the afternoon of
21 September 20th, 2015?

11:16AM

22 A. Minus the cones, but, yes, later on identifying cones were
23 put next to the evidence, but, yes.

24 MR. POHL: Your Honor, I would offer Exhibits

25 Number 93.1 through 4 into evidence and ask for permission to

1 publish them to the jury.

2 MR. IOVIENO: Objection, relevance.

3 THE COURT: They're admitted, 93.1 through 93.4.

4 (Exhibit No. 93.1 through 93.4 received into
5 evidence.)

6 THE COURT: What we were doing, we were showing it to
7 the witness first, then when I admit it, you can see it. It's
8 kind of a two-step process.

9 THE COURT: Go ahead.

11:17AM 10 MR. POHL: Thank you very much, your Honor.

11 Q. Sergeant Detective Daley, this is Exhibit 93.1. Can you
12 tell the ladies and gentlemen of the jury what we're looking at
13 here?

14 A. This is the end location where Irvin dropped to the ground
15 opposite 72 Trenton Street.

16 Q. Okay. So we've got the -- there are two cars, correct?

17 A. Yes, there are two parked cars, correct.

18 Q. There are two red objects on the ground. Do you know what
19 those are?

11:18AM 20 A. Yes, these are red Chicago Bulls hat underneath first the
21 white car in front, to the left, I should say, and there's a
22 red T-shirt on the ground in front of the second car with some
23 blood smearing on the front bumper of the second car.

24 MR. POHL: Next photograph, 93.2. Thank you.

25 Q. That's what?

1 A. That's the red hat I just spoke of underneath the car.
2 Now it's labeled with Cone 6.

3 Q. And 93.3.

4 A. That's the red T-shirt on the ground that was later
5 identified as Cone 7.

6 Q. And through the course of your investigation, were you
7 able to identify that that was the shirt that Irvin De Paz was
8 wearing when he was killed?

9 A. Yes.

11:19AM 10 Q. Why is it still at the scene?

11 A. Because we process the scene as is, and once everything is
12 documented, photographed, measured, then it's collected.

13 Q. Irvin De Paz, an ambulance responded to take Irvin De Paz
14 to the hospital, correct?

15 A. Yes.

16 Q. And is it your understanding that the shirt was cut off
17 Mr. De Paz prior to him being taken to the hospital?

18 A. Yes, it appears after seeing it later, it was cut for
19 removal, correct.

11:19AM 20 MR. POHL: 93.4.

21 Q. What are we looking at here, Sergeant Detective?

22 A. That's blood smears and dripping blood on the car, the
23 second car.

24 Q. All right. You processed that, you and the detectives
25 that you worked with collect the evidence at that scene,

1 correct?

2 A. Yes, we identified it, marked it, collected it, yes.

3 MR. POHL: Your Honor, with your permission, I'd ask
4 Sergeant Detective Daley to get down from the witness stand and
5 join me in the well.

6 Q. Sergeant, I'm going to hand you Exhibit 95. Do you
7 recognize that?

8 A. Yes, this is the red hat in the photographs underneath the
9 car scene.

11:21AM 10 Q. Okay. The pictures that we just looked at a moment ago?

11 A. Correct.

12 MR. POHL: I'd offer 95 into evidence.

13 MR. IOVIENO: Objection. Relevance.

14 THE COURT: Overruled. It's admitted, 95.

15 (Exhibit No. 95 received into evidence.)

16 Q. All right. I hold up for you, Sergeant Detective Daley,
17 what's been marked Exhibit Number 94 and ask if you recognize
18 this?

19 A. Yes, that's the red T-shirt that Irvin De Paz was wearing,
11:21AM 20 and it was found on the street opposite 72 Trenton Street, and
21 we collected it that evening.

22 Q. Would I be correct that the shirt has been mounted so that
23 the jurors can look at it prior to your testimony here today,
24 correct?

25 A. Yes, I asked Boston Police Crime Laboratory to mount it

1 for presentation.

2 Q. All right. So I'm going to draw your attention to a
3 couple different markings on the shirt. First of all, your
4 Honor, I'd offer 94 into evidence.

5 MR. IOVIENO: Same objection.

6 THE COURT: Overruled. It's admitted, 94.

7 (Exhibit No. 94 received into evidence.)

8 Q. Sergeant, let's start with the front of the shirt.
9 There's markings labeled cut 1 and cut 2?

11:22AM 10 A. Yes.

11 Q. And there's a sort of discolored or different color on the
12 left-hand side of the shirt. What is that?

13 A. Those are stab wounds, and the result of the stab wounds
14 is the blood in the area of them.

15 MR. NORKUNAS: Judge, if I might, perhaps we could see
16 what Mr. Pohl is laying out as well, both the jury and we can
17 see that.

18 THE COURT: Why don't we have Sergeant Daley take the
19 stand again.

11:23AM 20 Q. Sergeant, there's something in the back, correct?

21 A. Yes, it's labeled Number 3. It appears to be an apparent
22 hole in the shirt corresponding to a stab wound on
23 Irvin De Paz.

24 Q. And there's writing on the front of the shirt?

25 A. Yes, something relative, it all started with a mouse, some

1 kind of Disney, it appears to say, "It all started by a mouse"
2 with "Walt Disney" written underneath.

3 Q. Sergeant Detective Daley, how -- after you collected the
4 evidence from the crime scene, how did you begin to conduct
5 your investigation into who was responsible for murdering
6 Irvin De Paz?

7 A. On arrival at the crime scene, after getting some
8 preliminary information, I organized a line search down
9 Trenton Street towards Brook, which includes 6 to 8 officers
10 line up in a line and go down the street looking for any
11 evidence, so that was done.

12 We also did a canvass, knocking on doors, see if
13 there's any other witnesses that may have saw something as well
14 as we did a video canvass looking for any residential homes or
15 commercial homes that may have cameras in the area that may
16 have captioned a portion of the incident. That was all done
17 that evening. The video canvass also followed up the several
18 days afterwards, and we collected from several residences
19 personal cameras that people have in their residences.

11:24AM 20 Q. Is that, at least in 21st Century America, is that
21 standard practice in the Boston Police Department?

22 A. Yes, it is now, yes.

23 Q. And it's fair to say that that's often a useful technique
24 to try to determine who had committed a particular crime?

25 A. Yes.

1 Q. All right. You were able to be do that in this case --

2 A. Yes.

3 Q. -- from a number of different neighborhood-mounted
4 cameras?

5 A. Yes.

6 Q. Let me put up for the witness Exhibit Number 96.
7 Sergeant Detective Daley, can you see that?

8 A. Yes.

9 Q. Do you recognize it?

11:26AM 10 A. Yes, it's a residential camera at 90 Trenton Street
11 mounted on the back of the house, the side rear of the house,
12 and it faces out towards Trenton Street where the top of it
13 captures a portion of Trenton Street.

14 Q. Okay. And I should maybe before I ask you any other
15 questions about the video surveillance recordings that you
16 attained, everybody has cameras, cell phones, clocks on phones,
17 clocks on their DVRs, hardly any of them match. Did you
18 encounter that problem in this case?

19 MR. MURPHY: Objection, your Honor.

11:26AM 20 THE COURT: I'll sustain it as to the leading.

21 MR. POHL: Thank you.

22 Q. Did you collect video surveillance in this case?

23 A. Yes.

24 Q. Is one of the things that you do when you collect video
25 surveillance evidence to put the times on the video recording

1 devices that you obtain?

2 A. Yes.

3 Q. And when you obtain them from different locations, is one
4 of the things that you try to do to determine how those videos
5 sync up?

6 A. Yes, the DVRs to each residence, they usually don't set
7 the correct, time so we have to synchronize to the DVR. They
8 don't care about the time as long as they record it, so we have
9 to synchronize the DVR time to real time.

11:27AM 10 Q. And in the course of this, you gathered video surveillance
11 from several different locations, correct?

12 A. Yes.

13 Q. And each time that you got video surveillance recordings,
14 what kind of things did you do to make sure that you knew sort
15 of the timing of what you were looking at?

16 A. Well, I have a technician that comes with me, and in his
17 presence, I see him, he takes a picture of the DVR with his
18 cell phone, so it captures the time on the DVR to the time on
19 his cell phone, and it shows the difference then, and then he
11:28AM 20 documents it on a form, and that's how we know to make the
21 adjustments to get the realtime on the video.

22 Q. I see. All right. So there's a date on this particular
23 recording, correct?

24 A. Yes.

25 Q. That date is September 20th, 2015?

1 A. Yes, it is.

2 Q. For this video and some of the other videos that we're
3 going to show thereafter, were you able to determine about what
4 time the video clips I'm about to show you took place?

5 A. Yes, at approximately 5:10 p.m. on the afternoon of the
6 20th.

7 Q. Okay. All right. This is one of the video surveillance
8 recordings that you collected in the aftermath of the
9 Irvin De Paz murder?

11:29AM 10 A. Yes.

11 MR. POHL: Your Honor, I would admit, move to admit
12 96, and I'd ask permission to publish it for the jury.

13 MR. IOVIENO: Same objection.

14 THE COURT: Overruled. 96 is admitted.

15 (Exhibit No. 96 received into evidence.)

16 Q. Sergeant Detective Daley, now that everyone on the jury
17 has it, can you tell the jury what they're going to see when we
18 press play here? What can you tell the jury to be looking for
19 as they view this particular video recording?

11:29AM 20 A. The top portion of the screen, you'll see the opposite
21 side of Trenton Street, which is the odd numbered side. You'll
22 see a person with a red shirt go running by later identified as
23 the victim De Paz, he goes running by, and this person with the
24 white T-shirt right behind him chasing him, and a couple of
25 seconds later, you'll see a third individual with a white

1 T-shirt closest to the camera on the even side jogging by as
2 well, all heading left to right on your screen.

3 Q. All right. Thank you. Let me pause it right there. So
4 you've been to the neighborhood. This is 90 Trenton Street?

5 A. Yes.

6 Q. And if you're looking at this camera and everybody is
7 running to the right, is that in the direction of
8 72 Trenton Street?

9 A. Yes, it is.

11:30AM 10 Q. How far away is 90 Trenton Street and 72 Trenton Street?

11 A. I would estimate 25 yards.

12 Q. Okay. So before I press play again, what are you going to
13 see in the video recordings once we unclick the pause button
14 and allow it to play?

15 A. On the same location on the screen, now on the even side
16 closest to the camera, you'll see two people running by in
17 white T-shirts, one in front of the other.

18 Q. Okay. And I paused it, so the realtime calculation
19 probably isn't going to be picked up now, but about how much
11:31AM 20 time passes between the time they run from left to right on the
21 camera, the clip we just saw, and the time the men in the white
22 shirts run back?

23 A. Approximately 15 seconds.

24 (Video played)

25 MR. POHL: All right. Thank you.

1 Could I have Exhibit 96.2 for the witness.

2 Q. Sergeant Detective Daley, do you have that in front of
3 you?

4 A. Yes.

5 Q. 96.2, this is another video clip; is that correct?

6 A. Yes, it is.

7 Q. What are we looking at here?

8 A. It's the same recording system of 90 Trenton Street. This
9 view is from the front door looking down the stairs from the
11:33AM 10 front door, and it captures a portion of the sidewalk in front
11 of 90 Trenton.

12 Q. Okay. Same house, different location?

13 A. Different location.

14 Q. All right.

15 MR. POHL: I'd offer this, your Honor, as
16 Exhibit Number 96.2.

17 MR. IOVIENO: Objection.

18 THE COURT: The objection is overruled. I'll give the
19 same objection as to all the videos.

11:33AM 20 MR. IOVIENO: Yes, your Honor.

21 THE COURT: I'll give you a standing objection to all
22 the videos.

23 MR. IOVIENO: Thank you.

24 THE COURT: It's admitted, 96.2.

25 (Exhibit No. 96.2 received into evidence.)

1 MR. POHL: Thank you.

2 Q. Before I press play, can you tell the ladies and gentlemen
3 of the jury what they're going to see here?

4 A. On the top left corner of the screen, you're going to see
5 somebody run by going left to right, and then approximately 15
6 minutes later, you'll see two people running by right to left.

7 Q. All right.

8 THE COURT: 15 minutes or 15 seconds?

9 THE WITNESS: 15 seconds, I apologize.

11:34AM 10 Q. The video we watched a minute ago had captured both sides
11 of the street, there's the far side and the near side?

12 A. Correct.

13 Q. Would it be fair to say this is the near side of
14 90 Trenton Street?

15 A. Yes.

16 Q. So the person that just jogged by would be the person in
17 96.1 that was in the lower half the screen; is that right?

18 A. Correct.

19 Q. Then as this video continues to roll, Sergeant Detective
11:34AM 20 Daley, what are we going to see in a few more seconds?

21 A. You're going to see two bodies run by going right to left.

22 Q. All right. Thank you.

23 MR. POHL: For the witness.

24 Q. Sergeant Detective Daley, I'm putting up Exhibit 97. Do
25 you recognize that?

1 A. Yes, that's a still from the video we just watched of the
2 two gentlemen going from right to left. The first person
3 appears to have a knife in his left hand.

4 MR. POHL: I'd offer Exhibit 97 and ask permission to
5 publish it.

6 THE COURT: It's admitted, 97.

7 (Exhibit No. 97 received into evidence.)

8 Q. Sergeant Detective Daley, what do you see here?

9 A. This is the same -- I'm sorry, the top left corner, it's a
11:35AM 10 still photograph, a snippet taken from the video that you just
11 saw of the first person running by with a knife in his left
12 hand.

13 Q. All right. Thank you. You gathered additional
14 surveillance video in the neighborhood of that particular
15 murder; is that correct?

16 A. Yes.

17 Q. Sergeant Detective Daley, as I put up Exhibit Number 98,
18 do you recognize that?

19 A. Yes, this is a video captured from the residence at 94
11:36AM 20 Trenton Street.

21 Q. Okay. So, 90 Trenton Street is me, and 72 Trenton Street
22 would be that way, 94 would be to my left, your right?

23 A. Yes.

24 Q. Okay. 94 Trenton Street --

25 MR. POHL: Your Honor I'd offer Exhibit Number 98 and

1 ask permission to play it.

2 THE COURT: All right. It's admitted.

3 (Exhibit No. 98 received into evidence.)

4 Q. Sergeant Detective Daley, what are we going to see on the
5 video recording before we press play?

6 A. You're going to see one male running left to right, and
7 then approximately 15 seconds later, you're going to see two
8 males running right to left, one in front of the other.

9 Q. As the 15 seconds go by, as the two men in the white
11:37AM 10 shirts come back, okay, what do you see?

11 A. It appears as if the first male is with a knife wiping off
12 a knife as he's running.

13 MR. POHL: 99 for the witness.

14 Q. Do you recognize that, Sergeant Detective Daley?

15 A. Yes, this is a still snippet from the video I just watched
16 from 94 Trenton Street, and it shows the first person running
17 down, running/walking down the sidewalk with a knife in his
18 hand and some kind of white cloth in his right hand.

19 MR. POHL: I'd offer Number 99, your Honor.

11:38AM 20 THE COURT: It's admitted, 99.

21 (Exhibit No. 99 received into evidence.)

22 Q. Now for the jury, Sergeant Detective Daley.

23 A. This is a snippet from the earlier, the video that we just
24 watched from 94 Trenton Street, and it captures the first
25 individual going down the sidewalk right to left, appears to

1 have a knife in his hand with some kind of white cloth in the
2 other hand.

3 Q. Sergeant, I think you testified earlier that one of the
4 members of your squad, Detective Callahan, went to the hospital
5 to check on the condition of Irvin De Paz, correct?

6 A. Yes.

7 Q. And while at the hospital learned that Mr. De Paz had
8 died, correct?

9 A. Yes.

11:39AM 10 Q. Was Mr. De Paz' body taken to the office of the chief
11 medical examiner at that time?

12 A. Yes.

13 Q. And an autopsy was performed, correct?

14 A. Yes, sir.

15 Q. And that determined how Mr. De Paz died?

16 A. Yes.

17 Q. All right.

18 MR. POHL: Can we pull up 101.2.

19 Q. Sergeant Detective Daley, I'm going to click through a
11:39AM 20 couple of pictures for you only. These are Exhibits 101.2
21 through 5. Do you recognize those?

22 A. Yes.

23 Q. All right. How do you recognize those as?

24 A. These are isolated photographs of the stab wounds that
25 Irvin De Paz suffered.

1 MR. POHL: I'd offer these, your Honor.

2 MR. IOVIENO: Objection, your Honor.

3 THE COURT: Overruled. They're admitted 101.2 through
4 101.5.

5 (Exhibit No. 101.2 through 101.5 received into
6 evidence.)

7 Q. Sergeant Detective Daley, I'm showing you Exhibit 101.2.

8 A. Yes.

9 Q. What are we looking at here?

11:40AM 10 A. It's a stab wound with the letter B next to it, some
11 numbers down below and a ruler, and it's stab wound B, and I
12 know it to be the stab wound to his left torso.

13 MR. POHL: Next.

14 Q. This is 101.3. What are we looking at here,
15 Sergeant Detective Daley?

16 A. These are also two close-ups of stab wounds to
17 Mr. De Paz's left arm indicated by the letters C and D with a
18 ruler and some numbers down below.

19 Q. And where is that on Mr. De Paz' body?

11:41AM 20 A. It's at the elbow area but on the inside elbow area of his
21 body, left arm.

22 Q. And would they be close to the stab wound for B that we
23 saw a moment ago?

24 A. Yeah, it appears that B, C and D are corresponding to each
25 other.

1 Q. In the arm, out the arm into the torso?

2 A. Correct.

3 MR. POHL: Next.

4 Q. What's this? What are we looking at here,
5 Sergeant Detective Daley?

6 A. It appears to be a vertical stab wound to the left back of
7 Irvin De Paz labeled by the letter E, as in echo with a ruling
8 and some numbers underneath it.

9 Q. And the next photograph is 101.5.

11:42AM 10 A. That's a close-up of the stab wound that I just described,
11 stab wound E in the back.

12 Q. So I hold up Exhibit Number 94 for you again. Stab wounds
13 on the left-hand side of the shirt, correct?

14 A. Yes.

15 Q. Stab holes in the left-hand side of the shirt?

16 A. Yes.

17 Q. And a hole on the back of the shirt?

18 A. Yes.

19 Q. All right. They appear to you to correspond to the
11:43AM 20 photographs that were just discussed?

21 A. Yes, to his injuries, yes.

22 MR. POHL: Pull up for the witness Exhibit 102.

23 Q. Do you recognize that, Sergeant Detective Daley?

24 A. Yes.

25 Q. Is it a death certificate in the case of Irvin De Paz?

1 A. Yes, yes, it appears to be a certified death certificate
2 created by the Commonwealth of Massachusetts, Department of
3 Public Health of Irvin De Paz.

4 Q. I ask you to point out, it has two different parts of the
5 death certificate.

6 MR. POHL: Excuse me, your Honor, I'd offer
7 Exhibit 102.

8 THE COURT: All right. It's admitted, 102.

9 MR. MURPHY: Objection, relevance, your Honor.

11:44AM 10 THE COURT: Overruled. It's admitted.

11 (Exhibit No. 102 received into evidence.)

12 Q. So, for the jury, this is the death certificate we were
13 referencing earlier, correct?

14 A. Yes.

15 Q. And I'd point out two different parts of the death
16 certificate. First, it discusses the cause of death; is that
17 correct?

18 A. Yes.

19 Q. And the death certificate issued after examination by the
11:44AM 20 medical examiner was what?

21 A. Stab wounds of torso and upper extremity.

22 Q. Thank you. And the manner of death?

23 A. Homicide.

24 Q. All right. Sergeant Detective Daley, what steps did you
25 take to investigate who had committed this homicide?

1 A. Later on that evening, we were made aware that Irvin's
2 family, his mother and I believe a girlfriend, had responded to
3 the Mass. General Hospital, so myself and Detective Callahan
4 responded back to the Mass. General Hospital where we
5 introduced ourselves to Irvin's mother and some aunts who had
6 arrived at the hospital, and we tried to get some background on
7 Irvin, who he was with, where he was coming from.

8 We were able to speak to Irvin's girlfriend, a woman
9 by the name of Daisy, and she had some information who he may
10 have been with, and after some telephone calls, we were able to
11 identify a gentlemen named Dennis Perdomo, who he was with
12 prior to him getting stabbed.

13 Relative to finding that information out, we
14 contacted, we got a phone number for Dennis Perdomo, called him
15 that evening, and we sat down with him about 12:30 that night
16 and took a statement from Dennis Perdomo.

17 Q. And based on that interview with Mr. Perdomo, would it be
18 fair to say that you and the detectives that you work with
19 generated a photo array?

11:46AM 20 A. Yes.

21 Q. And did you show the photo array to Mr. Perdomo to see if
22 he could identify -- well, did you gather any sort of
23 surveillance evidence or video evidence concerning Mr. Perdomo
24 that corroborated the information that you had received that he
25 had been in the area with Irvin De Paz on the day that

1 Irvin De Paz was killed?

2 A. Yes, some of the information he put on the table was
3 corroborated by some video that we had captured at a laundromat
4 at the end of Trenton and Brooks Street. Mr. Perdomo was with
5 Irvin as they ran down the street. Mr. Perdomo dived into a
6 laundromat and hid behind some machines in the laundromat.
7 Irvin took a right off Trenton Street, and from that
8 separation, that was all corroborated from the video and from
9 what Dennis Perdomo told us, so it gave us a little direction
10 on what was happening before Irvin got stabbed.

11:47AM

11 Q. So, at -- you interviewed Mr. Perdomo, correct?

12 A. Yes.

13 Q. And attempted to put together an array of pictures that
14 might have led to an identification of the person that
15 committed the murder; is that correct?

16 A. Yes, relative to these conversations a name was generated
17 from these conversations with Mr. Perdomo and Irvin's
18 girlfriend. We put that person's photo in a photo array, and I
19 believe like four days later, we arranged to have that array
20 shown to Mr. Perdomo again, I mean, we met him a second time

11:48AM

21 and showed the array to Mr. Perdomo trying to help putting the
22 investigation, and the results were negative, no I.D. was made.

23 Q. And the name of the person that Mr. Perdomo had said he
24 heard or might have thought might have been involved in this
25 was what?

1 MR. LOPEZ: Objection.

2 THE COURT: I'll allow it as evidence that it was
3 said, not as proof that this person did anything. In other
4 words, ladies and gentlemen, you may consider this only for the
5 fact that this was actually said to the detective. It's not
6 proof that this person did anything at all.

7 A. The name Ochoa was put on the table. We were able to
8 cobble together the idea of a Carlos Ochoa, and that's the
9 person's photograph we put in the array.

11:49AM 10 Q. And did you determine whether Carlos Ochoa had another
11 name?

12 A. I believe Melara.

13 Q. All right. You put together a photo array or photo spread
14 that had Carlos Ochoa or Carlos Melara in it, correct?

15 A. Yes.

16 Q. You showed it Dennis Perdomo, correct?

17 A. Yes.

18 Q. He didn't pick Ochoa or anybody else out of the array,
19 correct?

11:49AM 20 A. No, he did not.

21 Q. Would I be correct that for the weeks after Irvin De Paz'
22 murder, this was still an active, ongoing investigation by the
23 Boston Police Department, correct?

24 A. Yes.

25 Q. But you continued to investigate who had committed the

1 murder?

2 A. We did.

3 Q. After sort of the negative photo array, did you receive
4 information from another law enforcement agency about this
5 murder?

6 A. Yes, the Massachusetts State Police.

7 Q. Okay. And what can you tell the jury about that?

8 MR. MURPHY: Objection, your Honor, as to when.

9 THE COURT: Can you put a time frame on that?

11:50AM 10 Q. How long -- the photo array was in a few days after the
11 murder, correct?

12 A. Yes.

13 Q. And you spoke to police officers with the Massachusetts
14 State Police about the murder, correct?

15 A. Yes.

16 Q. I think what counsel and the Court is asking, do you
17 remember now around what time of year, approximately month, day
18 those conversations took place?

19 A. Definitively, no, but I would guess approximately October,
11:50AM 20 late October, early November.

21 Q. All right. And you were contacted by the State Police.
22 What happened after you got a call from the State Police about
23 the murder?

24 A. We had some communication, both in person and over the
25 phone, and I was told that our investigation, they had some

1 information on our homicide on Trenton Street, and my office in
2 conjunction with the Suffolk County D.A.'s Office, who has
3 jurisdiction over our homicides, discussions were made, and at
4 some point, the decision was made that our case was a smaller
5 portion of a larger federal investigation, and decisions were
6 made for us to work in conjunction with them, but at some point
7 I made a copy of my whole investigation and handed it off to
8 the U.S. Attorney's Office.

9 Q. Maybe I can do this by bounding the time frame we're
11:52AM 10 talking about. You were advised that or a series of arrest
11 warrants were going to be executed in connection with that
12 federal case?

13 MR. MURPHY: Objection, your Honor, leading.

14 THE COURT: Sustained as to the leading.

15 Q. Well, let me put it this way. Were you advised -- were
16 you advised -- well, do you recall working on January 29th,
17 2016?

18 A. Yes.

19 Q. Okay. Do you remember where you were on January 29th,
11:52AM 20 2016?

21 A. Eventually I ended up at the Chelsea police station.

22 Q. Why did you go to the Chelsea police station?

23 A. There was an operational take-down date of this operation,
24 and I wanted to try and speak to somebody.

25 Q. Okay. Who was that?

1 A. Joel Martinez.

2 Q. And why did you want to speak with Joel Martinez?

3 A. Because I was made aware that he had been identified as
4 being involved in the Irvin De Paz murder.

5 Q. Okay. And just so that we're absolutely clear,
6 Sergeant Detective Daley, you met Joel Martinez that morning,
7 correct?

8 A. Briefly, yes.

9 Q. Okay. And Joel Martinez is not in this courtroom, he's
10 not one of the four defendants here, correct?

11 A. No.

12 Q. So, would I be correct that sort of between the time of
13 the murder, right, September 20th, 2015, and that date when you
14 first met Joel Martinez, that's the time frame that we're
15 talking about, that you were coordinating your investigation
16 with the State Police and the U.S. Attorney's Office?

17 MR. MURPHY: Objection, your Honor, leading.

18 THE COURT: Sustained.

19 A. We were in communications.

11:54AM 20 THE COURT: Hold on.

21 Q. I'll ask you, Sergeant Detective Daley, that's fine.
22 Would I be correct that -- well --

23 THE COURT: Let's put a question.

24 MR. POHL: Thank you.

25 Q. Sergeant, you met Irvin De Paz' family, correct?

1 A. Yes.

2 Q. And you reviewed the death certificate, correct?

3 A. Yes.

4 Q. All right. How old was Irvin De Paz?

5 A. I'm sorry, I didn't hear.

6 Q. How old was Irvin De Paz when he was killed?

7 A. He was 15 years old.

8 MR. POHL: Can I have one moment, your Honor. Thank
9 you very much.

11:55AM 10 THE COURT: We might as well take our 12:00 break now.

11 THE CLERK: All rise.

12 (A recess was taken.)

13 THE CLERK: All rise for the jury.

14 (JURORS ENTERED THE COURTROOM.)

15 THE CLERK: Court is back in seated. You may be
16 seated. Cross-examination.

17 MR. MURPHY: Thank you, your Honor.

18 CROSS-EXAMINATION

19 BY MR. MURPHY:

12:10PM 20 Q. Good afternoon, your Honor, Sergeant Detective Daley.

21 Might we see Exhibit 97. So, Sergeant Detective Daley, you
22 responded to the scene of this on Trenton Street?

23 A. Yes.

24 Q. And you were the leader of the squad that was
25 investigating that stabbing for the Boston Police Department,

1 correct?

2 A. Yes.

3 Q. And you organized neighborhood canvasses, right?

4 A. Yes.

5 Q. Searches of the neighborhood?

6 A. Yes.

7 Q. You collected video from neighbors?

8 A. Yes.

9 Q. And you interviewed as many neighbors as you could to find
12:11PM 10 out what happened, correct?

11 A. Yes.

12 Q. And is it fair to say, Sergeant Detective, that your main
13 objective was to try to identify who that was in Exhibit 97 who
14 was holding the knife?

15 A. Yes, that would be the main objective.

16 Q. And, secondarily, to figure out who the second guy was
17 with the white shirt who was running with him, right?

18 A. Yes.

19 Q. And the reason that you wanted to identify the person in
12:11PM 20 the white shirt holding the knife that you can see in

21 Exhibit 97 is that if you came to the conclusion that there was
22 grounds to believe that he was the person who had stabbed
23 Mr. De Paz, you'd want to arrest him, correct?

24 A. Yes.

25 Q. That would be standard Boston Police Department protocol,

1 right?

2 A. Yes.

3 Q. And the reason you wanted to arrest him, all things being
4 considered, the Boston Police Department does not want people
5 running out the street of East Boston or anywhere stabbing
6 people, correct?

7 A. That's correct.

8 Q. And you said that you mentioned that your folks from your
9 squad and you personally had spoken to Mr. De Paz' family,
10 correct?

12:12PM

11 A. Yes, that evening, yes.

12 Q. And the other reason you want to make an arrest or another
13 reason you want to make an arrest is that you want to tell the
14 family of a victim of a stabbing like this what happened and
15 who did it?

16 A. Eventually, sure.

17 Q. So, you responded on September 20th to the scene, as I
18 heard your testimony on direct, you were working the case, you
19 and your squad in the last week of September and the first week
20 of October, through October, until at some point you received a
21 call from someone from the Massachusetts Police in either late
22 October or early November; is that right?

12:13PM

23 A. That would be my guesstimate, correct.

24 Q. Okay. And would it be fair to say, sir, that the basic
25 message of the call you received was we'd like you to stand

1 down?

2 A. No.

3 Q. Okay. Is it fair to say that you were asked to turn your
4 investigatory file over to the State Police and the FBI?

5 A. Initially, no.

6 Q. Okay. When did that happen?

7 A. After a series of communications between myself, my
8 supervisors and the District Attorney's Office. When it
9 happened, I mean, we had a sit-down at the District Attorney's
10 Office in mid-November, so it was in the planning stages that I
11 was going to turn over my investigation.

12 Q. So, between the time that you received that call from the
13 state trooper in late October, early November and mid-December,
14 you continued the investigation to try to figure out who had
15 stabbed De Paz, correct?

16 A. No, I had started transferring the investigation to them.

17 Q. And is it fair to say, sir, that during the entire period
18 between the time that you began investigating the case on
19 September 20th and that call from the state trooper in late
20 October or early November, you were not told by another law
21 enforcement agency that the FBI already knew who the person
22 with the knife that's depicted in Exhibit 97 is?

23 A. No, until I started getting communications from them, I
24 did not know.

25 Q. So you continued to work on the homicide because nobody

1 told you that the FBI had already determined who did it,
2 correct?

3 A. No, my first communications with the State Police, they
4 laid out that they had a witness that could help the
5 investigation --

6 Q. And that was in you said late October?

7 THE COURT: Hold on, let him finish.

8 A. I'm guessing mid to late October. I don't have a
9 definitive date.

12:15PM 10 Q. Fair enough. And it was after that call that you stopped
11 working the case actively and began to transfer your file, is
12 that correct, Sergeant Detective Daley?

13 A. That's fair to say.

14 Q. And you testified on direct examination that you heard
15 that there was a series of arrests that were going to be made
16 on January 26, 2015; is that correct?

17 A. At some point, I was made aware of that. When, maybe
18 early January. I wasn't part of that decision-making process,
19 I was kind of removed from all of that, but at some point I was
12:16PM 20 made aware that there was going to be a take-down date, and I
21 wanted to be a part, if I could, be a part of it, and they
22 allowed me to.

23 Q. And one of the people that was being taken down on that
24 take-down was Joel Martinez, correct?

25 A. That was what I was told, correct.

1 Q. And it was on January 26th, 2015 that you went and sought
2 to speak with Mr. Murphy?

3 A. 29th.

4 Q. 29th, pardon me, it was January 29th, 2015 that you went
5 to speak with Mr. Martinez, correct?

6 A. 2016.

7 Q. 2016?

8 A. Yes, the early morning of the hours of that day I went to
9 Chelsea police station, correct.

12:16PM 10 Q. And it was your understanding that Mr. Martinez had been
11 arrested that day or the previous?

12 A. I'm not sure what information I had the night before. I'm
13 not sure. All I know, I was told that he may be there, and I
14 went, and he had been taken into custody.

15 Q. So, by that day, he had been taken into custody, correct?

16 A. By the time I got there, he was already in custody, yes.

17 Q. And so if I can do the math, that was from September to
18 October to November to December to January, more than four
19 months after Mr. De Paz' stabbing?

12:17PM 20 A. That's correct, yes.

21 MR. MURPHY: May I have a moment, your Honor. Nothing
22 further, your Honor, thank you.

23 THE COURT: Mr. Lopez.

24 MR. LOPEZ: Nothing, your Honor.

25 THE COURT: Redirect.

1 REDIRECT EXAMINATION

2 BY MR. POHL:

3 Q. Sergeant Detective Daley, you've been a police officer for
4 a long time. Have you ever investigated murders that involved
5 more than one party?

6 A. Yes.

7 Q. All right. And prior to your assignment in the homicide
8 unit, where did you work in the Boston Police Department before
9 that?

12:18PM 10 A. I was the supervisor for seven years in the drug control
11 unit.

12 Q. And in your capacity either in the drug unit or in
13 multi-defendant or multi-party homicides, have you had to
14 evaluate when and how to make particular arrests?

15 A. Yes.

16 Q. What are some of the kinds of considerations that you take
17 into account when and whether to make an arrest in the case?

18 MR. LOPEZ: Objection, your Honor.

19 THE COURT: Overruled.

12:18PM 20 A. Every investigation is different. Every amount of targets
21 or defendants is different, but you have to take into
22 consideration, do some intelligence on them, where they are,
23 who they are with, you know, to do some logistics with other
24 agencies, other units within the structure that you'll need for
25 the take-down, and you've got to consider personal safety as

1 well for any witnesses or family members, so all those things
2 have to be talked about, discussed and planned, so hopefully
3 everything goes as planned, so it takes a little thought
4 involved.

5 MR. POHL: Thank you.

6 THE COURT: Recross.

7 MR. MURPHY: No, your Honor, thank you.

8 THE COURT: Thank you. You may step down.

9 MR. POHL: Jeffrey Wood.

12:19PM 10 JEFFREY ELLIOTT WOOD, JR., having been duly sworn by
11 the Clerk, testified as follows:

12 THE CLERK: Please state your name spelling your last
13 for the record.

14 THE WITNESS: Jeffrey Elliot Wood, Jr., W-o-o-d.

15 MR. POHL: May I, your Honor?

16 THE COURT: Yes.

17 DIRECT EXAMINATION

18 BY MR. POHL:

19 Q. Good afternoon.

12:20PM 20 A. Good afternoon, sir.

21 Q. Mr. Wood, where do you work?

22 A. I work for the FBI.

23 Q. How long have you worked for the FBI?

24 A. Over 18 years.

25 Q. And what is your current assignment at the FBI?

1 A. I'm the supervisory special agent for the gang squad.

2 Q. Okay. And what kind of agents or agencies are comprised
3 within the gang squad at the FBI?

4 A. We have the FBI, we work with other federal law
5 enforcement agencies, we've worked with ATF, we've worked with
6 Homeland Security, we work with our local and state law
7 enforcement partners, we work with the Massachusetts State
8 Police, the Massachusetts Department of Corrections, our local
9 police departments include the Lynn Police Department, the
10 Lawrence Police Department, Chelsea, Revere and Boston Police
11 Departments, and we also work with some of our county law
12 enforcement partners, which include at this time the
13 Suffolk County and the Essex County Sheriff's Department.

14 Q. You've been an FBI agent for 18 years. How long during
15 the period in which you've been an FBI agent have you been
16 assigned to investigate gangs or gang activity in
17 Massachusetts?

18 A. I began conducting gang investigations in 2002. In 2007,
19 I went to Afghanistan for approximately four months. I then
20 spent the next 14 months assigned to the FBI headquarters
21 working at the safe street gang unit and the National Gang
22 Intelligence and Coordination Center, and then upon my return
23 in 2009, I again returned to the gang squad here and have
24 stayed there ever since.

25 Q. Okay. So would I be correct from the bulk of that time,

1 from 2010 until fairly recently, you were a special agent
2 assigned to that unit, correct?

3 A. Yes, that is correct.

4 Q. And what kinds of duties would a special agent do in the
5 FBI assigned to the gang squad?

6 A. As an agent, we conduct criminal enterprise investigations
7 targeting violent street gangs that have a negative impact.
8 I've worked in Lawrence, Haverhill, Lowell, Lynn, Chelsea,
9 Boston, Chelsea and Revere is my primary areas of

12:23PM 10 responsibility, and we with our local, state and federal law
11 enforcement partners would target criminal gangs that sell
12 drugs, commit violent crimes, a myriad of violent crimes.

13 Q. In addition to being a special agent, is it fair to say
14 that you recently took on supervisory responsibilities for that
15 squad of the FBI in Boston?

16 A. Yes, I've been a supervisor now for approximately a year
17 and a half, maybe a little longer.

18 Q. Special Agent Wood, during your work on the FBI's Boston
19 gang squad, were you a part of an investigation into La Mara
12:23PM 20 Salvatrucha or MS-13 in Massachusetts?

21 A. Yes, I was.

22 Q. All right. And would it be fair to say that during that
23 investigation, your role grew?

24 A. Yes.

25 Q. Okay. So, let's start at the beginning. When did you

1 first -- well, start at the very beginning. You started
2 working gangs in 2002. When is the first time that you heard
3 or came into contact with MS-13 in Massachusetts?

4 A. In August --

5 MR. MURPHY: Objection.

6 THE COURT: Overruled.

7 A. I first started looking into MS-13 in August of 2002 when
8 I joined the gang unit.

9 Q. And why was that?

12:24PM 10 A. Well, Somerville had just experienced a rape of two women,
11 one being in a wheelchair, and those rapes were committed by
12 MS-13 gang members.

13 MR. MURPHY: Objection, your Honor. Motion to strike.

14 THE COURT: I'm going to strike that and instruct the
15 jury to disregard the facts of that specific crime. Go ahead.

16 Q. Did you begin -- you began to -- is it fair to say that
17 you tried to learn about MS-13 recently in your arrival in the
18 gang squad in 2002?

19 A. Yes, immediately I began talking to my local and state law
12:25PM 20 enforcement partners, the State Police, the Boston Police to
21 learn more about MS-13. I coordinated a training coordination
22 meeting outside of Philadelphia, Pennsylvania for the State
23 Police and the Boston Police and myself to attend in 2003 for
24 us to learn even more about MS-13 and ongoing investigations
25 throughout the country at that point.

1 Q. All right. In the course of your duties as an FBI
2 special agent, did you ever travel to El Salvador?

3 A. Yes, I did.

4 Q. How many times have you traveled to El Salvador?

5 A. I have been to El Salvador on two occasions.

6 Q. When was the first time that you went to El Salvador,
7 Special Agent Wood?

8 A. I believe it was either 2005 or 2006.

9 Q. Okay. What was the purpose of you going to El Salvador?

12:26PM 10 A. It was for the second annual MS-13 coordination
11 training/meeting conducted by federal, state and local law
12 enforcement agencies within the United States and our Central
13 American counterparts. We had law enforcement officers from
14 El Salvador, Guatemala, Honduras, Mexico and other Central
15 America countries, and it was our second meeting that was held
16 in El Salvador to discuss and learn more about the problems
17 with MS-13.

18 Q. I think you testified a moment ago that for a period of
19 time you were deployed to Afghanistan and then you worked in
12:26PM 20 Washington. When you came back to Boston, did you continue to
21 try to learn about MS-13?

22 A. Yes.

23 Q. All right. How did you do that?

24 A. Well, we would talk about MS-13 amongst yourselves trying
25 to learn everything we could. We would -- I would read any

1 kind of intelligence projects that the FBI would disseminate
2 from ongoing criminal enterprise investigations throughout the
3 United States. I would attend different gang training as far
4 as where MS-13 would be discussed, and then in 2012 one of my
5 partners initiated a criminal enterprise investigation
6 targeting MS-13, and at that point I would participate and
7 provide help and assistance. I would give opinions and
8 direction to my partners, and I would just keep myself up to
9 speed on the investigation until I was named as a case agent.

12:27PM 10 Q. Okay. So you mentioned around 2012 that the FBI's Boston
11 office commenced an investigation into MS-13. Would I be
12 correct that there were earlier attempts to investigate MS-13
13 while you worked in the FBI's Boston office?

14 A. That is right, yes.

15 Q. But I think what we're going to talk about here today and
16 tomorrow is about sort of this case, and this case commenced
17 around 2012. Would that be correct?

18 A. That is correct, yes.

19 Q. Okay. Special Agent Wood, in going -- as part of working
12:28PM 20 in and commencing this investigation, you said you traveled to
21 El Salvador in 2005 or 6, correct?

22 A. Yes, I traveled the first time in 2005 or 6, and I
23 traveled again in 2013.

24 Q. And you had met with people who had investigated MS-13
25 previously, correct?

1 A. Yes.

2 Q. And you had spoken to police officers in the course of
3 your duties, correct?

4 MR. MURPHY: Objection. Leading, your Honor.

5 THE COURT: I'll allow leading for this kind of
6 background information.

7 MR. POHL: Thank you.

8 THE COURT: Go ahead.

9 Q. You had spoken to police officers, correct?

12:29PM 10 A. I have, yes.

11 Q. Encountered MS-13 members, correct?

12 A. Yes.

13 Q. And when you were in El Salvador the first time, anyway,
14 what kind of information did you receive about MS-13 while you
15 were there?

16 MR. LOPEZ: Objection.

17 THE COURT: I'll allow it in general terms, not
18 specifics, in other words, just sort of an overview, not
19 specific details.

12:29PM 20 A. The formation of the gang, the history of the gang,
21 current investigations throughout Central America and the
22 United States, an overview of how the gang was changing from
23 when it was first formed to what we were experiencing in 2005
24 throughout the United States and Central America, a general
25 overview of just the gang and its methods of operation.

1 Q. And the kind of people that you spoke to at that meeting
2 were who? Who are we talking about?

3 A. We spent time with the El Salvadorian police officers who
4 were at the conference, and we socialized with them and had
5 meetings during the day, and at night, we just talked typical
6 law enforcement police officer talk between federal law
7 enforcement officers.

8 We also had FBI agents and police officers from around
9 the country that we were all together, and we would all talk
10 about what we had seen, what we had learned, and just passed on
11 that information to one another.

12 Q. So, through the course of those conversations, through the
13 course of you reading about MS-13, in the course of your
14 reading, briefings from other FBI offices throughout the
15 country, in the course of speaking to officers that were
16 encountering MS-13 members on the streets, did you learn about
17 how the gang was formed?

18 A. Yes.

19 Q. Okay. What can you tell the jury about how MS-13 was
20 initially formed?

21 MR. MURPHY: Objection, your Honor, hearsay.

22 THE COURT: Overruled.

23 A. The gang was initially formed in 1979. You had a lot of
24 El Salvadorian immigrants fleeing El Salvador from the civil
25 war there, and when they arrived, they were -- the immigrants

1 were picked on by other gangs. You had a group of
2 El Salvadorians who liked rock and roll music, they liked to
3 smoked pot and get high, and they initially called themselves
4 you know, Mara Salvatrucha, and that was the initiation of the
5 gang, and at that point that's how it started, and then it has
6 spread since then.

7 Q. How? How has it spread?

8 MR. MURPHY: Your Honor, may I have a standing
9 objection to this line of questioning?

12:32PM 10 THE COURT: Yes.

11 MR. MURPHY: Thank you.

12 THE COURT: Go ahead.

13 A. Well, as more El Salvadorian immigrants came into the
14 country, as gangs became more prevalent in the '80s, and as
15 gang members started getting arrested, and they would go into
16 jail, you had a lot of MS-13 gang members in jail, and back
17 then they were called MS, Mara Salvatrucha, but the gang in the
18 prison systems in California, you have the Norteños, which is
19 for Northern California and the Sureños, which is Southern
12:32PM 20 California, and the Sureños throw a lot of their allegiance to
21 the Mexican Mafia.

22 The Mexican prison gang runs the prisons, and so they
23 made the MS-13 gang form an alliance with them and fall under
24 the rules, and as a response, MS became MS-13 because 13 is the
25 number that is associated with the Mexican Mafia, and that's

1 how they threw their allegiance to MS-13, so initially mostly
2 MS-13 was in California, and then as immigrants started to
3 spread, you started seeing MS cliques forming in other cities,
4 however, upon their release from prison, a lot of MS-13 gang
5 members were deported back to El Salvador, and once they got
6 deported back to El Salvador for the violent crimes they
7 committed in the United States, they then started morphing
8 their gang into more of an El Salvadorian gang, so --

9 THE COURT: Let's pause there and put another
12:33PM 10 question.

11 MR. POHL: Thank you, your Honor.

12 Q. So this sort of early iteration, it started in California,
13 I think you said the people were then deported back into
14 El Salvador, correct, and the first time you went to
15 El Salvador in 2005, you were sort of receiving information
16 about the gang current activities in the United States,
17 correct?

18 A. Yes.

19 Q. And would I be correct that you spoke to El Salvador
12:34PM 20 Police, other law enforcement officers that you spoke to in
21 2005, the meeting in El Salvador, about sort of what they were
22 learning about how the gang had come from California to
23 El Salvador and then back to the U.S.?

24 A. Yes.

25 Q. And what did you learn?

1 A. Well --

2 MR. LOPEZ: Objection, your Honor. What he learned
3 from others who would not testify?

4 THE COURT: Yes, it's in the nature of expert
5 testimony. Overruled.

6 A. Well, the gang was morphing. It used to be strictly an
7 American-type gang, something that most Americans would
8 understand, but as they moved into El Salvador, the gang was
9 starting to initiate their leadership and base it in
10 El Salvador, so the gang started morphing in the early part of
11 the century, and it's morphed into what we know where the
12 leadership structure is based in El Salvador, the head leaders
13 are all in prison and run the gang from inside the prison, they
14 send their instructions from inside the prison out to the
15 leaders out in El Salvador, who then send those orders back to
16 their cliques in El Salvador, Honduras, Guatemala and back into
17 the United States.

18 Q. Okay. So, let me -- that's 2005. Let's pick back up
19 again. I don't think we need to go year by year by year, but
12:35PM 20 would it be fair to say that beginning in 2005 and continuing
21 until the point in time at which sort of the FBI began its
22 investigation into MS-13 in Massachusetts, you continued to
23 have the kinds of discussions that you've discussed a moment
24 ago, correct?

25 MR. MURPHY: Objection, your Honor, leading.

1 THE COURT: I'll allow that one. Overruled.

2 A. Yes.

3 Q. All right. So, and those discussions -- as a result of
4 those discussions, have you become familiar with the structure
5 and the organizational structure of MS-13?

6 A. I have, yes.

7 Q. And when I say the organizational structure, I mean sort
8 of in the time frame that we're talking about, from 2012
9 forward?

12:36PM 10 A. I have, yes.

11 Q. Okay. You said a moment ago about sort of incarcerated
12 leaders in El Salvador; is that correct?

13 A. Yes.

14 Q. And that the gang has sent people into the United States,
15 correct?

16 A. Yes.

17 Q. All right. What can you tell the jury about what you've
18 learned about how MS-13 is organized in the United States?

19 A. In the United States, an individual clique is what we
12:37PM 20 would call a chapter, a group of MS-13 gang members, so there's
21 many cliques. Each clique will be led by either the first word
22 or the runner, and most cliques will have the second word, the
23 second runner, so that's the leader in the immediate second in
24 command.

25 Some cliques may actually have a treasurer, but you

1 have the first word, the second word, then the homeboys, which
2 are full-fledged gang members, and then they'll have chequeos
3 and paros, who are the recruits, the new up and coming gang
4 members.

5 Q. Are there particular colors that MS-13 members sometimes
6 use to identify themselves?

7 A. Yes, their primary color is blue and white, we'd say
8 Dallas Cowboys is one of the colors, but we'll see them wearing
9 blue clothes. They like white with that. At times, they'll
10 wear neutral colors, beige as a color just to kind of avoid law
11 enforcement attention because they know now that we --

12 MR. MURPHY: Objection, your Honor.

13 THE COURT: We'll stop it there. Put another question
14 to him.

15 MR. POHL: Thank you.

16 Q. -- know those colors. Do MS-13 members typically or
17 oftentimes bear tattoos?

18 A. It's changed, but, yes, we have many MS-13 members that
19 have tattoos, but it's been changing.

12:38PM 20 Q. Okay. Are there particular signs or symbols that an MS-13
21 member would utilize to identify himself as an MS-13 member?

22 A. Yes.

23 Q. Can you give the jury an example of what one of those
24 signs would look like.

25 A. They like the devil's horns, so you'll see them flash

1 signs like this where you have your two outside fingers
2 pointing up. (Indicating) That's the devil's horns. They
3 like MS, they like MS-13. Their rosary beads would be blue and
4 white or blue. They'll have bandanas that are blue, again,
5 signifying who they are. Those are the predominant signs.

6 Q. So, during the time frame in which you were conducting
7 your investigation -- well, I should have asked this question a
8 moment ago. So before I move on, let me jump back one. You
9 talked about tattoos and the fact that they often had tattoos.

12:39PM 10 The kinds of tattoos they had included MS or MS-13, correct?

11 A. Yes.

12 Q. What about tattoos denoting the particular cliques that
13 members belong to?

14 A. They would have tattoos that have their clique initials on
15 it. They could spell it out. Sometimes they just go MS-13,
16 sometimes they'd say MS, sometimes they actually spell out
17 La Mara Salvatrucha. I've seen tattoos where sometimes they'll
18 throw the Salvadorian flag, they'll throw 503, which is the
19 country code for El Salvador for a tattoo, so there's a lot of
12:40PM 20 different types of tattoos, but, again, tattoos are changing.

21 Q. So, through your work on the FBI investigation into MS-13,
22 through the conversations you've had with law enforcement
23 agents throughout the country, the conversations you've had
24 with officers in El Salvador, what can you tell the jury about
25 sort of the mission, the goal of MS-13?

1 MR. MURPHY: Objection, your Honor.

2 THE COURT: Overruled.

3 A. MS-13 is about controlling their testimony, MS-13 is about
4 being in control, letting -- being in charge of that territory,
5 being the predominant, if not the only gang in that territory.
6 Like all gangs, there are some rival gangs that are more of an
7 enemy, mortal enemy to that gang, but with MS, we don't see
8 them forming alliances with other street gangs that we've seen
9 with other gangs that we've investigated. This gang is about
10 they are there, they're in charge, and they don't want any kind
11 of rivals, any kind of competition in their neighborhoods, in
12 their streets.

13 Q. You mentioned a moment ago gang rivals. Are there
14 particular groups or gangs that have been identified by you and
15 the officers you work with as being the principal rivals of
16 MS-13?

17 A. Yes, yes, we have.

18 Q. And who, is there a particular gang, is there one gang in
19 particular that's sort of a significant rival to MS-13?

12:42PM 20 A. Yes.

21 Q. And what is that gang called?

22 A. 18th Street.

23 Q. And would I be correct that 18th Street identifies itself
24 through particular colors?

25 A. Yes, they do.

1 Q. And what colors are those?

2 A. They like red, so they would predominantly wear red.

3 Q. Have you -- you mentioned a moment ago the sort of
4 different levels or ranks that are frequently seen in MS-13,
5 correct?

6 A. Yes.

7 Q. Aside from the leadership, the first word or second word,
8 there were homeboys was a full member, correct?

9 A. Yes.

12:43PM 10 Q. And the other words you used were called a paro?

11 A. Paro, yes.

12 Q. And chequeo?

13 A. And chequeo, yes.

14 Q. Have you in the course of your conversations with other
15 investigators being in El Salvador, working on this case, have
16 you sort of -- can you describe for the jury the ways in which
17 an MS-13, someone who wants to join MS-13 would be promoted and
18 included in the gang?

19 MR. MURPHY: Your Honor, may we be heard, please?

12:43PM 20 THE COURT: All right.

21 (THE FOLLOWING OCCURRED AT SIDEBAR:)

22 THE COURT: Yes.

23 MR. MURPHY: Thank you, your Honor. My objection is
24 this does get into core viable principle and methods testimony
25 because I think what he's going to say, and this is what I am

1 particularly concerned about, is that in order to become a
2 full-fledged homeboy, one has to commit a murder, and I think
3 there's testimony in his prior testimony that that has changed
4 over time. I think they'll be people who are witnesses in this
5 case who are alleged to be full-fledged homeboys who don't have
6 murders, so it's really a question of I think outside the
7 presence of the jury establishing that he has enough data to be
8 able to show that some particular percentage of people who get
9 promoted to homeboy have killed someone because I think there's
10 going to be significant evidence that our guys are homeboys,
11 but there's not going to be any particular evidence suggesting
12 that they committed particular murders, and so I think it's
13 extraordinarily prejudicial if this guy says everybody who is a
14 homeboy has killed somebody.

15 THE COURT: What do you expect the testimony to be?

16 MR. POHL: I actually expect the testimony to be more
17 along the lines of what Mr. Murphy suggested, that by the later
18 part of this investigation, it was more true that you had to
19 have committed a murder to be considered for homeboy status,
20 but I don't think he's going to say that was a requirement
21 throughout the existence of MS-13.

22 THE COURT: In other words, that it changed over time?

23 MR. POHL: Yes, exactly.

24 MS. LAWRENCE: And El Salvador also has requirements.

25 MR. LOPEZ: Do you have to establish that progression

1 during your questioning?

2 MR. POHL: I don't think so.

3 THE COURT: I'm going to allow it, but I'm going to
4 give you a small allowance of latitude to make sure this is
5 phrased exactly correctly.

6 MR. POHL: Thank you very much.

7 (SIDEBAR CONFERENCE WAS CONCLUDED)

8 THE COURT: All right, sir. The objection is
9 overruled. Go ahead, Mr. Pohl.

12:46PM 10 MR. POHL: Thank you very much, your Honor.

11 Q. I'm going to ask you a couple questions about what we just
12 talked about. Would I be correct that during the time period
13 in which you've been learning about, educating yourself about
14 and then finally investigating MS-13, that the requirements
15 that the gang imposed to become a homeboy changed over time?

16 A. Yes.

17 Q. Would I be correct that during your career, conversations
18 with agents in other parts of the country and in El Salvador
19 and during this investigation and also during the investigation
12:47PM 20 that you conducted itself, that the requirements for becoming a
21 homeboy grew?

22 A. Yes, you would.

23 Q. Okay. All right. I think I'm going to jump back and ask
24 you some non-yes or no questions now. During your -- would I
25 be correct though that in order to become a member of MS-13, a

1 member would have -- well, what kinds of things would somebody
2 have to do in order to become a full member of MS-13?

3 MR. MURPHY: Objection.

4 MR. LOPEZ: Time frame.

5 THE COURT: Now, the last couple years?

6 MR. POHL: Let's bound it to this investigation.

7 Q. Your investigation started in 2012, thereabouts, right?

8 A. Yes.

9 Q. So let's say during 2012, right, and sort of the early
12:48PM 10 stages of your investigation, what would you -- what kind of
11 information were you receiving about the kinds of things
12 somebody would have to do to become a homeboy in MS-13?

13 A. The gang members would commit violent crimes against
14 rivals, suspected law enforcement cooperators that would either
15 a serious assault or even the killing of someone to become a
16 homeboy.

17 Q. Okay. During the investigation, would you say that the
18 requirements to become a homeboy became more stringent?

19 A. Yes.

12:48PM 20 Q. All right. Such that by the tail end of your
21 investigation in 2015, 2016, what kinds of requirements were
22 you seeing being imposed on somebody becoming a member of
23 MS-13?

24 A. The successful killing of a rival gang member or a
25 suspected law enforcement cooperator.

1 Q. Okay. You indicated a moment ago that in order to become
2 in the gang, you had to commit, sort of even at the beginning
3 of your investigation and before that, you had to commit some
4 kind of significant violent crime to be committed in the gang?

5 MR. MURPHY: Objection, your Honor.

6 THE COURT: Overruled.

7 Q. And --

8 THE COURT: I guess we need the beginning of the
9 investigation, meaning 2012.

12:49PM 10 MR. POHL: Yes.

11 THE COURT: Okay.

12 A. Yes.

13 Q. And would the violent crimes you said, I think you
14 mentioned two kind of violent crimes in particular, right, one
15 was a gang rival, correct?

16 A. Yes.

17 Q. And the other was a police informant, someone who is an
18 informant?

19 A. Yes.

12:49PM 20 Q. I'd like to talk about that for a minute. What have you
21 learned in the course of your investigation into MS-13
22 concerning MS-13's position with members that it believes are
23 providing information to the police?

24 MR. LOPEZ: Objection, your Honor. This investigation
25 starting in 2012.

1 THE COURT: I thought it was a generalized question
2 concerning MS-13 and during the period of time of roughly 2012.

3 MR. LOPEZ: Well, I ask for a clarification.

4 Q. Well, I mean, let's back up. Starting in 2005, when you
5 first went to El Salvador, did you learn whether or not MS-13
6 had a particular position concerning members that might provide
7 information to the police?

8 A. Yes.

9 Q. All right. And would it be fair to say that that position
10 has not changed during the course of your time when you've been
11 investigating the gang?

12 A. I would say that over the course of the investigation
13 since I started looking at MS-13 that the punishments have
14 become even more severe than when I knew about it in 2005.

15 Q. And specifically what is MS-13, what is an MS-13 member
16 required to do if he learns or believes that a member of the
17 gang is providing information to the police?

18 A. They'll do several steps. If they have very, very good
19 proof, they would try and kill that suspected cooperator right
12:51PM 20 away. If they just have suspicions, they will present their
21 evidence through their chain of command, which will go all the
22 way back to El Salvador, and then the leadership in El Salvador
23 will either approve a green light or say we don't have enough
24 evidence yet, and if they approve the green light, they will do
25 everything they can to kill that cooperator, and if they're

1 unable to locate the cooperator, they will kill their family
2 members.

3 Q. Let's talk about this investigation specifically. How did
4 the investigation into MS-13 in Massachusetts begin?

5 A. We developed a cooperating witness through the help of the
6 TAG.

7 Q. What's the TAG?

8 A. The TAG is the transnational anti-gang unit. We have a
9 TAG in El Salvador, Guatemala and Honduras. It's comprised of
10 law enforcement from the local police officers from each
11 country that are selected to work with the FBI on MS-13 and
12 18th Street gang investigations in those countries.

13 Q. And how did your sort of connection to or work with the
14 TAG lead you to be in a position to begin this investigation
15 here in Massachusetts?

16 A. The TAG had developed a cooperating witness that was
17 providing information to the TAG in El Salvador, and that
18 individual had been in the United States, had spent time in
19 prison here in the Boston area while awaiting deportation, and
20 the TAG reached out to a task force officer and said we have
21 someone that might be able to help you with your MS-13 problem
22 in Massachusetts.

23 Q. Okay. And what was sort of -- would I be correct that
24 eventually the FBI worked to bring this cooperating witness
25 back into the United States?

1 A. We did, yes.

2 Q. All right. And what kinds of things -- well, was the
3 witness interviewed in El Salvador prior to that?

4 A. The cooperating witness was interviewed in two locations
5 by the task force in El Salvador, the first time by the TFO,
6 and then the second time an FBI agent and a couple of TFOs,
7 which are task force officers, they flew down to El Salvador
8 and interviewed him again.

9 Q. And would I be correct -- when did the cooperating witness
10 first get brought back into the United States from El Salvador?

11 A. 2012 to 2013. That very early part of 2013 is when we
12 finally got him back, 2012.

13 Q. And can you tell the jury sort of how the FBI began to
14 sort of set up and establish the cooperating witness and review
15 his ability to access members of MS-13?

16 A. We interviewed the cooperating witness and decided that we
17 would take the opportunity to bring him back into the Boston
18 area and would have him post as a drug dealer and attempt to
19 purchase illegal narcotics from MS-13 gang members, and then
12:54PM 20 also we directed the CW to create a scenario where he would
21 seek volunteers from the gang to help protect a cartel's drug
22 shipments between Massachusetts and New Hampshire with
23 different drug traffickers.

24 Q. Well, I think I suspect, given the hour, we're going to
25 talk more about this tomorrow, but let me ask you a couple

1 questions about that now. The cooperating witness sort of
2 first made contact with a particular, with members of a
3 particular clique in Massachusetts, correct?

4 MR. MURPHY: Objection, your Honor. Leading.

5 THE COURT: Sustained.

6 Q. I can ask another question. At some point during your
7 investigation, did the cooperating witness -- well, what steps,
8 you said posing as a drug dealer, correct, through the
9 cooperating witness posing as a drug dealer. What kinds of
10 investigative techniques with the cooperating witness did you
11 do to begin to identify people who may be in MS-13?

12 A. We would have the cooperating witness in Chelsea, East
13 Boston areas where MS-13 had territory and attempt to start
14 meeting fellow El Salvadorians, and as he did, he would start
15 to gather evidence or not evidence, intelligence who they were
16 and try and determine whether they were, in fact, members of
17 MS-13 or not, so if they were MS-13, we would identify them as
18 members, homeboys. If not, maybe they were just drug dealers,
19 so we would gather intelligence against the people he would be
20 talking to to determine what kind of people he was running into
21 and meeting.

22 Q. What were the kinds of investigative steps that you would
23 take with the cooperating witness to sort of document or
24 corroborate the information that the cooperating witness was
25 providing to you and the other agency that you worked with?

1 A. Well, once the cooperating witness met with people in
2 Chelsea, he'd come back and say, oh, I met so and so, and he's
3 claiming to be MS-13, so at that point, then we go in Chelsea,
4 we have a Chelsea detective, and he would either know the
5 person himself or he would go back into the Chelsea Police
6 Department and look up the records and say have we ever done
7 any kind of investigation, have we ever done a field
8 investigation, a field identification of this person, and if
9 they had, they would have information on whether that person
10 was, in fact, a MS-13 gang member or not, and at that point
11 that corroborates what the cooperating witness was telling us.

12 Q. But in addition to that, would I be correct that the FBI
13 attempted when possible to record conversations that the
14 cooperating witness had?

15 MR. MURPHY: Objection.

16 THE COURT: It is leading. Sustained.

17 Q. Aside from those kind of field interviews that you talked
18 about, what other kinds of investigative steps did you take to
19 corroborate the information that the cooperating witness
20 provided you?

21 A. Once we identified targets for our investigation, 1, we
22 placed a consensual T3, which is a -- we were allowed to
23 intercept every phone call and text message that the
24 cooperating witness had with targets of the investigation. We
25 would provide the cooperating witness with a recorder which

1 would enable him to consensually record either audio and/or
2 audio and video recordings with the subjects of our
3 investigation.

4 Q. And were some of those consensual recordings?

5 MR. POHL: Can I have Exhibit 1 for the witness. This
6 is for the witness, Mr. Clerk.

7 Q. Special Agent Wood, we're going to click through three
8 pictures quickly, Exhibits 1.1, 1.2 and 1.3. Do you recognize
9 the pictures I have in front of you?

12:59PM 10 A. I do.

11 Q. How do you recognize them, sir?

12 A. That's the garage in Everett where the Eastside
13 Locos Salvatrucha clique would meet and hold their meetings,
14 and they would meet inside the garage, and, yes, we would place
15 a recorder on our cooperating witness, and he would record
16 those meetings.

17 Q. Okay. And how do you personally know that?

18 A. Well, I would be parked somewhere near there with my
19 partners, and we would be -- we would surround the best we
01:00PM 20 could and be in a position to be near that garage, so I've seen
21 the garage. I actually did some work on the garage to see if
22 we could actually do a Title III and place a bug in the garage.

23 MR. POHL: I'd offer Exhibit 1, your Honor.

24 THE COURT: The three photographs?

25 MR. POHL: Yes, 1.1 through 1.3.

1 THE COURT: All right. They're admitted.

2 MR. POHL: Thank you.

3 (Exhibit Nos. 1.1, 1.2 and 1.3 received into
4 evidence.)

5 Q. Special Agent Wood, let me quickly go through these for
6 the jury. 1.1, what are we looking here?

7 A. This is the garage off to the left, and this is the road
8 that the garage is on in Everett.

9 Q. We've blown up that section. Is that the area we're
01:00PM 10 looking at?

11 A. Yes.

12 Q. That's the garage?

13 A. Yes.

14 Q. Where the meetings occurred?

15 A. Yes.

16 Q. Thank you. Next photograph, 1.2.

17 A. This is one of the bays of the garage where a car would
18 pull in and they could do their work on the car inside the
19 garage.

01:01PM 20 Q. And you said that the clique would meet at this -- the
21 Eastside clique would meet at this garage?

22 A. They would meet inside the garage.

23 Q. Inside this bay area, is that where the meetings would
24 take place?

25 A. Yes.

1 Q. 1.3.

2 A. This is from a different location of the garage.

3 THE COURT: Is this a good place to break?

4 MR. POHL: I think this would be a good time to break.

5 THE COURT: All right. We'll break there for the day,
6 ladies and gentlemen. Remember my instructions particularly
7 not to discuss the matters with yourselves or anyone else, and
8 let's try to get started at 9:00 tomorrow morning on the dot.
9 Thank you.

01:01PM 10 THE CLERK: All rise for the jury.

11 (JURORS EXITED THE COURTROOM.)

12 (Whereupon, the hearing was adjourned at
13 1:01 p.m.)

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS) ss.
CITY OF BOSTON)

I do hereby certify that the foregoing transcript,
Pages 1 through 66 inclusive, was recorded by me
stenographically at the time and place aforesaid in Criminal
Action No. 15-10338-FDS, UNITED STATES vs. HERZZON SANDOVAL,
et al., and thereafter by me reduced to typewriting and is a
true and accurate record of the proceedings.

Dated this 7th day of June, 2018.

s/s Valerie A. O'Hara

VALERIE A. O'HARA

OFFICIAL COURT REPORTER